

Calendar No. 702

**106th Congress }
2d Session }**

SENATE

**{ REPORT
{ 106-353**

**NATIONAL MARINE SANCTUARIES
AMENDMENTS ACT**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

on

S. 1482



JULY 21, 2000.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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(II)

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NATIONAL MARINE SANCTUARIES AMENDMENTS ACT

JULY 21, 2000.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1482]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1482) “A bill to amend the National Marine Sanctuaries Act, and for other purposes”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1482, as reported, would reauthorize the National Marine Sanctuaries Act for six years, authorize funding levels for the program for those years, and make changes to improve the operation of the program.

BACKGROUND AND NEEDS

In response to public concerns over ocean pollution, Congress enacted the Marine Protection, Research and Sanctuaries Act in 1972 (16 U.S.C. 1431 et seq.). It authorized the Secretary of Commerce to designate areas of the marine environment with nationally significant ecological, historical, recreational, and aesthetic values as National Marine Sanctuaries (NMS). The National Marine Sanctuaries Program is administered by the National Oceanic and Atmospheric Administration (NOAA). Since the law was enacted, it has been amended and reauthorized in 1980 (P.L. 96-332), 1984 (P.L. 98-498), 1988 (Title II of P.L. 100-627), 1992 (P.L. 102-587), and 1996 (P.L. 104-283). Additionally, the Florida Keys National Marine Sanctuary was designated by legislation in 1990 under the Florida Keys National Marine Sanctuary and Protection Act (P.L. 101-605).

Marine sanctuaries, similar in concept to a national park on land, may protect marine habitats such as coral reefs or preserve cultural or historical assets, such as shipwrecks. The primary goal of a marine sanctuary is to preserve, and possibly enhance, the assets of the site while allowing for compatible public and private uses. The extent to which each sanctuary allows or restricts these uses is determined on a site-by-site basis through an open public process. As a general rule, activities like drilling, mining, dredging, dumping waste, or removing artifacts are prohibited, but shipping, commercial fishing, sport fishing, boating, scuba diving, and marine tourism are generally allowed where practicable. Scientific research and outreach programs are established at each sanctuary to maximize the public benefits and understanding of these areas.

Management of fisheries within the 200 mile Exclusive Economic Zone is coordinated with the appropriate regional fishery management council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Act requires the Secretary to provide regional fishery management councils the opportunity to prepare draft fishing regulations (guided by the National Standards of the Magnuson-Stevens Act) which are necessary to implement a proposed sanctuary management plan. The Secretary must accept and issue these regulations as final unless he finds the council's proposed regulations fail to fulfill the purposes and policies of the Act.

Each marine sanctuary handles public access to resources differently. The sanctuary system provides managers with the opportunity to test management measures on a small scale before they are applied to other Federal and state coastal programs. This gives managers the data necessary to improve public confidence in proposed management measures. These measures have included recreational use zones and areas that require the use of moorings.

Six of the twelve existing marine sanctuaries have been designated since 1990. One additional sanctuary, Thunder Bay (MI) is under development and is expected to be formally designated in the near future. These marine sanctuaries include a wide variety of marine habitats such as deep ocean gardens, near shore coral reefs, whale migration corridors, deep sea canyons, and underwater archaeological sites. In total, these sanctuaries protect nearly 18,000 square miles of ocean and coastal habitats. The following is a list of the existing sanctuaries: Channel Islands (CA), Gulf of the Farallones (CA), Cordell Banks (CA), Hawaiian Islands (HI), Fagatele Bay (American Samoa), Monitor (NC), Florida Keys (FL), Monterey Bay (CA), Flower Garden Bank (TX), Olympic Coast (WA), Gray's Reef (GA), and Stellwagen Banks (MA).

LEGISLATIVE HISTORY

On June 30, 1999, a hearing on the National Marine Sanctuaries program was held by the Subcommittee on Oceans and Fisheries. Testimony was provided by the Deputy Assistant Secretary of Commerce for Oceans and Atmosphere and members of the conservation and fishing communities. Witnesses testified on diverse aspects of the sanctuary program including funding priorities, multiple use of sanctuary assets, and public education and outreach.

S. 1482 was introduced on August 4, 1999, by Senators Snowe, Kerry, McCain, Hollings, and Breaux and referred to the Com-

mittee on Commerce, Science, and Transportation. Senator Kennedy is also a cosponsor.

On April 13, 2000, the bill was considered by the Committee in an open executive session. Senators Snowe and Kerry offered an amendment and the Committee, without objection, ordered S. 1482 reported as amended. The Snowe-Kerry amendment clarified the requirements of the Secretarial finding for new sanctuary designations and sunset the limitation on new designations concurrent with the authorization period. The amendment also added one year to the authorization period.

SUMMARY OF MAJOR PROVISIONS

S. 1482, as amended, authorizes the National Marine Sanctuaries Act (NMSA) at \$30 million in FY 2000 and increases annual funding by \$2 million per year to \$40 million in FY 2005.

Previous funding limitations have hampered the ability of the 12 existing sanctuaries to become fully operational. Therefore, S. 1482, as amended, directs the Secretary of Commerce to focus short-term efforts on developing and improving the operational capacity of existing sanctuaries before proposing the designation of additional sites. This is consistent with NOAA's stated plans for fiscal years 2000-2004. S. 1482, as amended, requires the Secretary to submit a finding to Congress before a sanctuary designation notice of intent is published in the Federal Register. Prior to such publication, the Secretary must make a finding concerning the operational status of the existing sanctuaries. The Secretary must find that the proposed new sanctuary will not have a negative impact on the sanctuary system as a whole. In addition, he must find that each existing sanctuary has (1) an operational level of facilities, equipment, and employees; (2) a plan for enforcement within its boundaries; (3) sufficient resources within that fiscal year to effectively implement the sanctuary management plan; (4) completed site characterization studies and management plan review or a plan and schedule for completion of these activities; and (5) a list of priorities for the sanctuary and a strategy to address them. In addition, S. 1482, as amended, requires at least one such finding to be published during the authorization period. This finding requirement expires with the end of the authorization period on September 30, 2004 and does not apply to the proposed Thunder Bay Sanctuary.

S. 1482, as amended, also authorizes the Secretary to develop educational and interpretive facilities to promote the sanctuary program. Due to the remote location of many of the sanctuaries, easily accessible facilities are needed to educate the public about the marine environment and the benefits of the sanctuary program.

S. 1482, as amended, authorizes criminal penalties for interfering with the enforcement of this Act. The reported bill also authorizes the sanctuaries to partner with state enforcement authorities and requires each sanctuary to include an enforcement strategy in its management plan. These partnerships are intended to maximize enforcement coverage in coastal areas.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1482—National Marine Sanctuaries Enhancement Act of 2000

Summary: Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1482 would cost the federal government \$172 million over the 2000–2005 period. The bill could affect direct spending and governmental receipts; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any effects on receipts or direct spending would be minimal. S. 1482 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

S. 1482 would amend the National Marine Sanctuaries Act, which authorizes and governs the National Marine Sanctuaries System (NMSS) administered by the National Oceanic and Atmospheric Administration (NOAA). The amendments would streamline the process for designating new sites for the NMSS and strengthen existing enforcement measures.

The bill would authorize the appropriation of \$210 million over the 2000–2005 period for operation of the NMSS, including \$30 million for 2000, \$32 million for 2001, \$34 million for 2002, \$36 million for 2003, \$38 million for 2004, and 40 million for 2005. For fiscal year 2000, \$26 million has been appropriated for the system to date.

In addition to amendments made to streamline or enhance the NMSS program and to authorize appropriations for the system, other provisions of the bill would:

- Impose criminal penalties on persons who interfere with investigations into violations of laws that protect marine sanctuary resources;
- Change the way NOAA sets fees for special use permits at sanctuaries;
- Allow the agency to apply for, accept, and use grant funds, from state, local, and regional government agencies; and
- Authorize the agency to accept and use donations from nonprofit groups (under cooperative agreements) and others in carrying out activities at national sanctuaries.

Other provisions of the bill, most of which would make technical amendments to the National Marine Sanctuaries Act, would have little or no effect on the federal budget.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1482 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
NMSS Spending Under Current Law:						
Budget Authority ²	26	0	0	0	0	0
Estimated Outlays	21	7	3	2	0	0
Proposed Changes:						
Authorization Level	4	32	34	36	38	40
Estimated Outlays	3	26	32	35	37	39
NMSS Spending Under S. 1482:						
Authorization Level	30	32	34	36	38	40
Estimated Outlays	24	33	35	37	37	39

¹ CBO estimates that enactment of this bill also could affect direct spending and receipts, but any amounts would be negligible.

² The 2000 level is the amount appropriated for that year for the NMSS.

Basis of estimate: For purposes of this estimate, CBO assumes that the entire amounts authorized for all activities will be appropriated in each fiscal year. Outlays are based on historical spending patterns for the affected programs.

Several provisions of the bill could affect governmental receipts or offsetting receipts (a credit against direct spending). Because all of the changes in such receipts would be offset by equal changes in direct spending, none of these provisions would have any net effect on the federal budget. Moreover, most such changes would be negligible. These provisions are:

- Section 8, which would impose criminal penalties on persons who interfere with the investigation by authorized officers into violations of laws that protect marine sanctuary resources;
- Section 11, which could result in lower receipts by allowing NOAA to accept in-kind contributions in lieu of certain fees at marine sanctuaries;
- Section 12, which would allow NOAA to accept and use grants provided by state, local, or regional government agencies; and
- Section 17, which would clarify that NOAA may authorize the use of certain NMSS symbols by others helping the agency to benefit the system.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Several provisions of S. 1482 could affect direct spending and governmental receipts. CBO estimates that these provisions would have no significant effect on the federal budget in any year.

Intergovernmental and private-sector impact: S. 1482 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

Previous CBO estimate: On July 1, 1999, CBO transmitted a cost estimate for H.R. 1243, the National Marine Sanctuaries Enhancement Act of 1999, as ordered reported by the House Committee on Resources on June 9, 1999. H.R. 1243 would reauthorize the National Estuaries Research Reserve System as well as the NMSS and would authorize money for new construction activities at NMSS sites. In addition, the House bill would authorize the appropriation of \$26 million annually for ongoing NMSS activities, which is less than the amounts in the Senate bill.

Estimate prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Victoria Heid Hall. Impact on the Private Sector: Natalie Tawil.

Estimate approved by: Peter H. Fontaine, Depute Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported: Because S. 1482, as amended, does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements.

NUMBER OF PERSONS COVERED

The legislation will have no additional effect on the number or types of individuals and businesses regulated.

ECONOMIC IMPACT

The legislation will have no additional effect on the economic impact of such regulation.

PRIVACY

The legislation will have no additional effect on the personal privacy of affected individuals.

PAPERWORK

The legislation will have no additional effect on the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section of the bill cites the short title of the reported bill as the “National Marine Sanctuaries Amendments Act of 2000.”

Section 2. Amendment of National Marine Sanctuaries Act

This section of the reported bill identifies the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) as the law that will be amended.

Section 3. Findings, Purposes, and Policies

This section of the reported bill clarifies the findings, purposes, and policies. Section 3(a) amends section 1431(a) of title 16, U.S. Code, to recognize the cultural and archaeological importance of certain areas of the marine environment.

Section 3(b) amends section 1431(b) of title 16, U.S. Code, to include maintaining natural biodiversity and biological communities, and the promotion of coordinated scientific research, long-term monitoring, and innovative management techniques as part of the purposes and policies of the NMSA.

Section 4. Definitions

This section of the reported bill amends section 1432 of title 16, U.S. Code, to revise certain definitions contained in the NMSA. The definition of “damages” is expanded to include the cost of curation and conservation of archaeological, historical, and cultural sanctuary resources. Response Costs is amended to include enforcement activities related to any incident. The term sanctuary resource is expanded to include culturally and archaeologically important resources. A new definition of system is added to refer to the National Marine Sanctuary System established by section 5 of the reported bill.

Section 5. Sanctuary Designation Standards

This section of the reported bill amends section 1433 of title 16, U.S. Code, to establish the existing sanctuaries as the National Marine Sanctuaries System. It also adds three new factors for the Secretary to consider during the proposal of new sanctuaries—biodiversity, ecological importance, and archaeological/cultural/historical importance.

This section of the reported bill also requires the Secretary to submit a finding to Congress prior to publishing a notice of intent to designate a new sanctuary that states whether each existing sanctuary has an operational level of facilities, a list of priorities it considers most urgent and strategies to address those priorities, a plan and schedule for the completion of site characterizations and management plan review, and a plan for enforcement within the sanctuary boundaries. This finding requirement does not apply to the proposed Thunder Bay National Marine Sanctuary. This section of the reported bill also requires the Secretary to submit at least one such finding to Congress prior to September 30, 2004. This provision expires on September 30, 2004.

Section 6. Procedures for Designation and Implementation

This section of the reported bill amends section 1434(a) of title 16, U.S. Code, to clarify and streamline the procedures the Secretary must follow to designate sanctuaries. This section requires the Secretary to prepare a set of designation documents to propose a new sanctuary. It also requires the Secretary to provide to Congress notice of a new sanctuary proposal.

Section 7. Prohibited Activities

This section of the reported bill amends section 1436 of title 16, U.S. Code, to clarify that it is illegal to offer for sale, purchase, import, or export sanctuary resources. In addition, this section clarifies additional activities that constitute interfering with enforcement.

Section 8. Enforcement

This section of the reported bill amends section 1437 of title 16, U.S. Code, to authorize certain law enforcement officials to arrest a person if there is reasonable cause to believe such person has committed a prohibited activity under this Act. This section also authorizes criminal penalties for interfering with the enforcement of this Act. In addition, this section authorizes the Secretary to

subpoena electronic files in connection with an investigation under this Act.

Section 9. Regulatory Authority

This section of the reported bill amends section 1439 of title 16, U.S. Code, to clarify the Secretary's authority to issue regulations under this Act.

Section 10. Research, Monitoring, and Education

This section of the reported bill amends section 1440 of title 16, U.S. Code, to authorize the Secretary to support or coordinate monitoring and research activities carried out by universities, non-profit groups, and other government agencies. This section authorizes NOAA to enter into partnerships with third parties to promote marine sanctuaries.

Section 11. Special Use Permits

This section of the reported bill amends section 1441 of title 16, U.S. Code, to require the Secretary to notify the public before identifying an activity under a special use permit. In addition, it requires the permittee to purchase liability insurance against potential claims arising out of the permitted activity. This section authorizes the Secretary to waive or reduce special permit fees for non-profit activities associated with sanctuary resources, or activities deemed beneficial to the system by the Secretary.

Section 12. Cooperative Agreements

This section of the reported bill amends section 1442 of title 16, U.S. Code, to authorize the Secretary to apply for, accept, and use grants from government entities, agencies, foundations, or other persons to further the purposes of this Act.

Section 13. Technical Changes

This section of the reported bill amends section 1443(a) of title 16, U.S. Code, to make several technical changes. It also sets a statute of limitations for resource damage assessment actions.

Section 14. Authorization of Appropriations

This section of the reported bill amends section 1444 of title 16, U.S. Code, to authorize \$30 million in fiscal year 2000; \$32 million for FY 2001; \$34 million in FY 2002; \$36 million in FY 2003; \$38 million in FY 2004; and \$40 million in FY 2005.

Section 15. U.S.S. Monitor

This section of the reported bill amends section 1445 of title 16, U.S. Code, to make a technical change related to the interpretation and display of artifacts from the U.S.S. *Monitor*.

Section 16. Advisory Councils

This section of the reported bill amends section 1446 of title 16, U.S. Code, to make a technical change to the Advisory Council provisions.

Section 17. Enhancement

This section of the reported bill amends section 1447 of title 16, U.S. Code, to authorize the use of the national marine sanctuary symbol by parties engaged in a formal collaboration with the sanctuary program.

This section of the reported bill also authorizes the Secretary to enter into agreements with non-profit organizations to assist in the administration of the sponsorship program. Under such an agreement, the non-profit organization may retain up to 5 percent of the contributed funds to offset administrative costs.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL MARINE SANCTUARIES ACT

SEC. 301. FINDINGS, PURPOSES, AND POLICIES. [16 U.S.C. 1431]

(a) FINDINGS.—The Congress finds that—

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these 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 aesthetic] *scientific, educational, cultural, archaeological, or aesthetic* qualities which give them special national, and in some cases international, 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 *ecosystem* 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 resources conservation, research, and management;

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

(6) [protection of these] *protecting the biodiversity, habitats, and qualities of such* special areas can contribute to maintaining a natural assemblage of living resources *and the values and ecological services they provide* for future generations.

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

(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national [significance;] *significance and to manage these areas as the National Marine Sanctuary System*;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and ac-

tivities affecting them, in a manner which complements existing regulatory authorities;

【3】 to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;】

(3) to maintain natural biodiversity and biological communities, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological processes;

(4) to enhance public awareness, 【understanding, appreciation, and wise use of the marine environment;】 *understanding, and appreciation of the natural, historical, cultural, and archaeological resources of national marine sanctuaries;*

(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;

【(5)】 (6) 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;

【(6)】 (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

【(7)】 (8) to create models of, and incentives for, ways to conserve and manage these 【areas;】 *areas, including the application of innovative management techniques; and*

【(8)】 (9) to cooperate with global programs encouraging conservation of 【marine resources; and】 *marine and coastal resources.*

【(9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.】

SEC. 302. DEFINITIONS. [16 U.S.C. 1432]

As used in this title, the term—

(1) “draft management plan” means the plan described in section 【304(a)(1)(C)(v)】 *304(a)(2)(A)* of this title;

(2) “【Magnuson】 *Magnuson-Stevens Act*” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) “marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;

(4) “Secretary” means the Secretary of Commerce;

(5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(6) “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

(B) the cost of damage assessments under section 303(b)(2) of this title; **[and]**

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced **[resources;]** *resources; and*

(D) *the cost of curation and conservation of archaeological, historical, and cultural sanctuary resources;*

(7) “response costs” means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or **[injury;]** *injury, including enforcement activities related to any incident;*

(8) “sanctuary resource” means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, **[educational,]** *educational, cultural, archaeological, or aesthetic value of the sanctuary; [and]*

(9) “exclusive economic zone” means the exclusive economic zone as defined in the **[Magnuson-Stevens Fishery Conservation and Management Act.]** *Magnuson-Stevens Act;*

(10) “system” *means the National Marine Sanctuary System established by section 303; and*

(11) “person” *has the meaning given that term by section 1 of title 1, United States Code, but includes a department, agency, and instrumentality of the government of the United States, a State, or a foreign Nation.*

[SEC. 303. SANCTUARY DESIGNATION STANDARDS.] [16 U.S.C. 1433]

SEC. 303. NATIONAL MARINE SANCTUARY SYSTEM.

[(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—

[(1) determines that the designation will fulfill the purposes and policies of this title; and

[(2) finds that—

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

[(B) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

[(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

[(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.]

(a) *ESTABLISHMENT OF SYSTEM.*—*There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this title.*

[(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.—]

(b) *SANCTUARY DESIGNATION STANDARDS.*—

(1) *IN GENERAL.*—*Before designating an area of the marine environment as a national marine sanctuary, the Secretary shall find that—*

(A) *the area is of special national significance due to its—*

- (i) *biodiversity;*
- (ii) *ecological importance;*
- (iii) *archaeological, cultural, or historical importance; or*
- (iv) *human-use values;*

(B) *existing State and Federal authorities should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;*

(C) *designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and*

(D) *the area is of a size and nature that will permit comprehensive and coordinated conservation and management.*

[(1)] (2) *FACTORS.*—*For purposes of determining if an area of the marine environment meets the standards set forth in [subsection (a)] paragraph (1) of this section, the Secretary shall consider—*

(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, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;*

(B) *the area's historical, 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, subsistence uses, other commercial and recreational activities, and research and education;*

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

(E) *the area's scientific value and value for monitoring as a special area of the marine environment;*

[(E)] (F) *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)] (G) 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;

(H) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses;

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

(J) the value of the area as an addition to the System;

[(H)] (K) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

[(I)] (L) the socioeconomic effects of sanctuary designation.

[(2)] (3) CONSULTATION.—In making determinations and findings, the Secretary shall consult with—

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

(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to 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 Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

[(3)] RESOURCE ASSESSMENT REPORT.—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 304(a)(2) of this title, a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial, governmental, or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the

proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.】

(4) *REQUIRED FINDINGS.*—

(A) *NEW DESIGNATIONS.*—*The Secretary shall not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary unless the Secretary has published in the Federal Register and submitted to Congress a finding that the addition of a new sanctuary will not have a negative impact on the National Marine Sanctuary System and each designated sanctuary has—*

(i) an operational level of facilities, equipment, and employees;

(ii) a plan for enforcement of the Act within its boundaries, including partnerships with adjacent States or other authorities;

(iii) sufficient resources available in the fiscal year in which the finding is made to implement the sanctuary management plan effectively;

(iv) completed site characterizations studies, inventories of known sanctuary resources, and management plan review; and

(v) a list of priorities and a strategy to address such priorities.

(B) *FAILURE TO COMPLETE CERTAIN REQUIREMENTS.*—*If the requirements of subparagraph (A)(iv) have not been completed at the time of designation of a sanctuary, then the Secretary shall submit a plan and schedule for the completion of these activities for the sanctuary, based on the assumption that the amounts appropriated for the sanctuaries will be maintained at the same level for each fiscal year for the next 10 years.*

(C) *EXCEPTION.*—*Subparagraph (A) does not apply to any draft management plan, draft environmental impact statement, or proposed regulation for the Thunder Bay National Marine Sanctuary.*

(D) *DEADLINE.*—*If a finding under subparagraph (A) has not been published by February 1, 2004, the Secretary shall submit to Congress by September 30, 2004, a finding stating whether the requirements in subparagraph (A) have been met.*

(E) *SUNSET.*—*The requirements of this paragraph shall be in effect until September 30, 2004.*

SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.
[16 U.S.C. 1434]

(a) *SANCTUARY PROPOSAL.*—

(1) *NOTICE.*—*In proposing to designate a national marine sanctuary, the Secretary shall—*

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

[(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall 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 documents, including an executive summary, consisting of—

[(i) the terms of the proposed designation;

[(ii) the basis of the findings made under section 303(a) of this title with respect to the area;

[(iii) an assessment of the considerations under section 303(b)(1) of this title;

[(iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

[(v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

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

[(vii) the draft environmental impact statement;

[(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

[(ix) the proposed regulations referred to in subparagraph (A).]

(C) on the same day the notice required by subparagraph (A) is submitted to the Office of the Federal Register, the Secretary shall submit a copy of the notice and the draft sanctuary designation documents prepared under paragraph (2) to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) *SANCTUARY DESIGNATION DOCUMENTS.—The Secretary shall prepare sanctuary designation documents on the proposal that include the following:*

(A) A draft environmental impact statement under paragraph (3).

(B) A management plan document, which the Secretary shall make available to the public, containing—

(i) the terms of the proposed designation;

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

(iii) the proposed goals and objectives, management responsibilities, resource studies, and appropriate

strategies for managing sanctuary resources, including innovative approaches such as marine zoning, interpretation and education, research, monitoring and assessment, resource protection, restoration, and enforcement (including surveillance activities for the area);

(iv) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of a State, or is superjacent to the subsoil and seabed within the seaward boundary of a State (as established under the Submerged Lands Act (43 U.S.C. 1301 et seq.);

(v) an estimate of the annual cost to the Federal government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education; and

(vi) the regulations proposed under paragraph (1)(A).

(C) Maps depicting the boundaries of the proposed sanctuary.

(D) A statement of the basis for the findings made under section 303(b)(2).

(E) An assessment of the considerations under section 303(b)(1).

(F) A resource assessment that includes—

(i) present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;

(ii) a discussion, prepared after consultation with the Secretary of the Interior, of any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and

(iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary.

[(2)] (3) ENVIRONMENTAL IMPACT STATEMENT.—The Secretary shall—

(A) prepare a draft environmental impact statement, **[(as provided by)]** *under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 303(b)(3) of this title, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and*

(B) make copies of the draft environmental impact statement available to the public.

[(3)] (4) PUBLIC HEARING.—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area

as a national marine sanctuary for the purpose of receiving the views of interested parties.

[(4)] (5) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, *cultural*, *archaeological*, or aesthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified [only by the same procedures by which the original designation is made.] *by following the applicable procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and chapter 5 of title 5, United States Code.*

[(5)] (6) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of *this Act and* the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

[(6)] (7) COMMITTEE ACTION.—After receiving the documents under subsection (a)(1)(C) of this section, the Committee on [Merchant Marine and Fisheries] *Resources* 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 documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) TAKING EFFECT OF DESIGNATIONS.—

(1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register 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. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection ~~[(a)(6)]~~ (a)(7) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary *or the national system* in a manner that the goals and objectives of the sanctuary *or the national system* cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.

(3) PROCEDURES.—In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and 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 of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

(c) ACCESS AND VALID RIGHTS.—

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

(d) INTERAGENCY COOPERATION.—

(1) REVIEW OF AGENCY ACTIONS.—

(A) IN GENERAL.—Federal agency actions internal or external to a national marine sanctuary, including private

activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.

(B) AGENCY STATEMENTS REQUIRED.—Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.

(2) SECRETARY'S RECOMMENDED ALTERNATIVES.—If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.

(3) RESPONSE TO RECOMMENDATIONS.—The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.

(e) REVIEW OF MANAGEMENT PLANS.—Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title.

SEC. 305. APPLICATION OF REGULATIONS; INTERNATIONAL NEGOTIATIONS AND COOPERATION. [16 U.S.C. 1435]

(a) REGULATIONS.—This title and the regulations issued under section 304 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

- (1) generally recognized principles of international law;
- (2) an agreement between the United States and the foreign state of which the person is a citizen; or
- (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) NEGOTIATIONS.—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(c) INTERNATIONAL COOPERATION.—The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this title and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

SEC. 306. PROHIBITED ACTIVITIES. [16 U.S.C. 1436]

It is unlawful to—

(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

(2) possess, ~~sell,~~ *offer for sale, sell, purchase, import, export,* deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

~~[(3) interfere with the enforcement of this title; or]~~

(3) interfere with the enforcement of this title by—

(A) refusing to permit any authorized officer to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purpose of conducting a search or inspection in connection with the enforcement of this title;

(B) assaulting, resisting, opposing, impeding, intimidating, or interfering with any authorized officer in the conduct of any search or inspection under this title;

(C) submitting false information to the Secretary or any officer authorized by the Secretary in connection with any search or inspection under this title; or

(D) assaulting, resisting, opposing, impeding, intimidating, harassing, bribing, or interfering with any person authorized by the Secretary to implement the provisions of this title; or

(4) violate any provision of this title or any regulation or permit issued pursuant to this title.

SEC. 307. ENFORCEMENT. [16 U.S.C. 1437]

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

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

(1) arrest any person, if there is reasonable cause to believe that the person has committed an act prohibited by section 306(3);

~~[(1)]~~ (2) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;

~~[(2)]~~ (3) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;

~~[(3)]~~ (4) seize any evidence of a violation of this title or of any regulation or permit issued under this title;

~~[(4)]~~ (5) execute any warrant or other process issued by any court of competent jurisdiction; and

~~[(5)]~~ (6) exercise any other lawful authority.

(c) CRIMINAL OFFENSES.—

(1) *IN GENERAL.*—Violation of section 306(3) is punishable by a fine under title 18, United States Code, imprisonment for not more than 6 months, or both.

(2) *AGGRAVATED VIOLATIONS.*—If a person in the course of violating section 306(3)—

(A) uses a dangerous weapon,

(B) causes bodily injury to any person authorized to enforce this title or to implement its provisions, or

(C) causes such a person to fear imminent bodily injury, then the violation is punishable by a fine under title 18, United States Code, imprisonment for not more than 10 years, or both.”;

[(c)] (d) *CIVIL PENALTIES.*—

(1) *CIVIL PENALTY.*—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

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

(3) *IN REM JURISDICTION.*—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(4) *REVIEW OF CIVIL PENALTY.*—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

(5) *COLLECTION OF PENALTIES.*—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) *COMPROMISE OR OTHER ACTION BY SECRETARY.*—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(e) *JUDICIAL CIVIL PENALTIES.*—The Secretary may bring an action to access and collect any civil penalty for which a person is liable under paragraph (d)(1) in the United States district court for the district in which the person from whom the penalty is sought resides, in which such person’s principal place of business is located, or where the incident giving rise to civil penalties under this section occurred.

[(d)] (f) *FORFEITURE.*—

(1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 303 of this title. None of those proceeds shall be subject to set-off.

(2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

(3) DISPOSAL OF SANCTUARY RESOURCES.—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) PRESUMPTION.—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

[(e)] (g) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

(1) EXPENDITURES.—

(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.

(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

(iii) manage and improve any other national marine sanctuary.

(2) **LIABILITY FOR COSTS.**—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

[(f)] (h) **SUBPOENAS.**—In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, *electronic files*, and documents, and may administer oaths.

(i) **NATIONWIDE SERVICE OF PROCESS.**—*In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.*

[(g)] (j) **USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.**—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

[(h)] (k) **COAST GUARD AUTHORITY NOT LIMITED.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.

[(i)] (l) **INJUNCTIVE RELIEF.**—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 303 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

[(j)] (m) **AREA OF APPLICATION AND ENFORCEABILITY.**—The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

[SEC. 308. SEVERABILITY. [16 U.S.C. 1439]]

【If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.】

SEC. 308. REGULATIONS AND SEVERABILITY.

(a) **REGULATIONS.**—*The Secretary may issue such regulations as may be necessary to carry out this title.*

(b) **SEVERABILITY.**—*If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the validity*

of the remainder of this title and of the application of that provision to other persons and circumstances shall not be affected.

[SEC. 309. RESEARCH, MONITORING, AND EDUCATION. [16 U.S.C. 1440]

[(a) IN GENERAL.—The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this title.

[(b) PROMOTION AND COORDINATION OF SANCTUARY USE.—The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.]

SEC. 309. RESEARCH, MONITORING, AND EDUCATION PROGRAMS AND INTERPRETIVE FACILITIES.

(a) IN GENERAL.—*The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs necessary and reasonable to carry out the purposes and policies of this title.*

(b) RESEARCH AND MONITORING.—*The Secretary may support, promote, and coordinate appropriate research on, and long-term monitoring of, the resources and human uses of marine sanctuaries, as is consistent with the purposes and policies of this title. In carrying out this subsection the Secretary may consult with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons, and coordinate with the National Estuarine Research Reserve System.*

(c) EDUCATION AND INTERPRETIVE FACILITIES.—*The Secretary may establish facilities or displays—*

(1) to promote national marine sanctuaries and the purposes and policies of this title; and

(2) either solely or in partnership with other persons, under an agreement under section 311.

SEC. 310. SPECIAL USE PERMITS. [16 U.S.C. 1441]

(a) ISSUANCE OF PERMITS.—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

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

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

(b) PUBLIC NOTICE REQUIRED.—*The Secretary shall provide appropriate public notice before identifying any activity subject to a special use permit under subsection (a).*

[(b)] (c) PERMIT TERMS.—A permit issued under this section—

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

(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

(4) shall require the permittee to purchase and maintain comprehensive general liability **[insurance]** *insurance, or post an equivalent bond*, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

[(c)] (d) FEES.—

(1) ASSESSMENT AND COLLECTION.—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

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

(A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

(B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

(C) an amount which represents the fair market value of the use of the sanctuary **[resource and a reasonable return to the United States Government.]** *resource.*

(3) *WAIVER OR REDUCTION OF FEES.—The Secretary may waive or reduce fees under this subsection, or accept in-kind contributions in lieu of fees under this subsection, for activities that do not derive profit from the access to and use of sanctuary resources or that the Secretary considers to be beneficial to the system.*

[(3)] (4) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

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

(B) for expenses of **[designating and]** managing national marine sanctuaries.

[(d)] (e) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

(2) assess a civil penalty in accordance with section 307 of this title; or

(3) both.

[(e)] (f) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

[(f)] (g) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

SEC. 311. COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS. [16 U.S.C. 1442]

(a) COOPERATIVE AGREEMENTS, GRANTS, AND OTHER AGREEMENTS.—The Secretary may enter into cooperative agreements, fi-

nancial agreements, grants, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this title. *Notwithstanding any other provision of law to the contrary, the Secretary may apply for, accept, and use grants from Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this title.*

(b) *USE OF STATE AND FEDERAL AGENCY RESOURCES.*—*The Secretary may, whenever appropriate, use by agreement the personnel, services, or facilities of departments, agencies, and instrumentalities of the government of the United States or of any State or political subdivision thereof on a reimbursable or non-reimbursable basis to assist in carrying out the purposes and policies of this title.*

[(b)] (c) *AUTHORIZATION TO SOLICIT DONATIONS.*—The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this title.

[(c)] (d) *DONATIONS.*—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

[(d)] (e) *ACQUISITIONS.*—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title.

SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES. [16 U.S.C. 1443]

(a) *LIABILITY.*—

(1) *LIABILITY TO UNITED STATES.*—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

(B) interest on that amount calculated in the manner described under section 2705 of title 33.

(2) *LIABILITY IN REM.*—Any vessel [used to destroy, cause the loss of, or injure] *that destroys, causes the loss of, or injures* any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

(3) *DEFENSES.*—A person is not liable under this subsection if that person establishes that—

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

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

(C) the destruction, loss, or injury was negligible.

(4) LIMITS TO LIABILITY.—Nothing in sections 181 to 188 of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person *or vessel* under this title.

(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—

(1) RESPONSE ACTIONS.—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) DAMAGE ASSESSMENT.—The Secretary shall assess damages (*as defined in section 302(11)*) to sanctuary resources in accordance with section 302(6) of this title.

(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon request of the Secretary, may commence a civil action in the United States district court for the appropriate district against any person or **[vessel who]** *vessel that* may be liable under subsection (a) of this section for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a **[person may]** *person or vessel may* be liable for such costs or damages.

(d) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42, and used *by the Secretary* as follows:

(1) RESPONSE COSTS AND DAMAGE ASSESSMENTS.—Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

(2) RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

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

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

(C) to manage and improve any other national marine sanctuary.

(3) FEDERAL-STATE COORDINATION.—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.

(4) STATUTE OF LIMITATIONS.—*An action for response costs and damages under subsection (c) may not be brought more than 2 years after the date of completion of the relevant damage assessment and restoration plan prepared by the Secretary.*

SEC. 313. AUTHORIZATION OF APPROPRIATIONS. [16 U.S.C. 1444]

There are authorized to be appropriated to the Secretary to carry out this title—

[(1) \$12,000,000 for fiscal year 1997;

[(2) \$15,000,000 for fiscal year 1998; and

[(3) \$18,000,000 for fiscal year 1999.]]

(1) \$30,000,000 for fiscal year 2000;

- (2) \$32,000,000 for fiscal year 2001;
- (3) \$34,000,000 for fiscal year 2002;
- (4) \$36,000,000 for fiscal year 2003;
- (5) \$38,000,000 for fiscal year 2004; and
- (6) \$40,000,000 for fiscal year 2005.

SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS. [16 U.S.C. 1445]

(a) CONGRESSIONAL POLICY.—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

[(b) INTERPRETATION AND DISPLAY OF ARTIFACTS.—

[(1) SUBMISSION OF PLAN.—The Secretary shall, within six months after November 7, 1988, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

[(2) CONTENTS OF PLAN.—The plan submitted under subsection (a) of this section shall, at a minimum, contain—

[(A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;

[(B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;

[(C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and

[(D) a draft cooperative agreement with the State of North Carolina to implement the plan.]

[(c)] (b) DISCLAIMER.—This section shall not affect the following:

(1) RESPONSIBILITIES OF SECRETARY.—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

(2) AUTHORITY OF SECRETARY.—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

SEC. 315. ADVISORY COUNCILS. [16 U.S.C. 1445a]

(a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an “Advisory Council”) to [provide assistance] *advise and make recommendations* to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—

- (1) persons employed by Federal or State agencies with expertise in management of natural resources;

(2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and

(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after November 4, 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

(2) Emergency meetings may be held at the call of the chairman or presiding officer.

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.

(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

SEC. 316. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES. [16 U.S.C. 1445b]

(a) AUTHORITY.—The Secretary may establish a program consisting of—

(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;

(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

(4) the authorization by the Secretary of the **[use]** *manufacture, reproduction, or other use* of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine **[sanctuaries;]** *sanctuaries or by persons that enter collaborative efforts with the Secretary under subsection (f).*

(5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;

(6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the man-

ufacture, reproduction or use of the [symbols] *symbols, including sale of items bearing the symbols*, published under paragraph (1);

(7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and

(8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries. Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.

(b) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a) of this section.

(c) COLLABORATIONS.—*The Secretary may authorize the use of the symbol described in subsection (a) by any person with which the Secretary is engaged in a collaborative effort to carry out the purposes and policies of this title.*

[(c)] (d) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (a) of this section, and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

[(d)] (e) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) of this section is deemed to be the property of the United States.

[(e)] (f) PROHIBITED ACTIVITIES.—It is unlawful for any person—

(1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

(2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

(3) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a monetary or in-kind contribution to the [Secretary; and] Secretary, or without prior authorization under subsection (a)(4); or

(4) to violate any regulation promulgated by the Secretary under this section.

(g) AUTHORIZATION FOR NON-PROFIT ORGANIZATION TO SOLICIT SPONSORS.—

(1) IN GENERAL.—*The Secretary may enter into an agreement with a non-profit organization authorizing it to assist in the administration of the sponsorship program established under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit organization to solicit persons to be official sponsors of the national marine sanctuary program or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit organiza-*

tion to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.

(2) REIMBURSEMENT FOR ADMINISTRATIVE COSTS.—Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.

