

National Marine Sanctuaries Act

Agencies: National Oceanic and Atmospheric Administration (within the Department of Commerce)

Citation: [16 U.S.C. §§ 1431 *et seq.*](#)

Enacted as: Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, on October 23, 1972; also known as the National Marine Sanctuaries Act (NMSA) per amendment in 1992. Title I of the MPRSA is also known as the Ocean Dumping Act. Title II of the MPRSA provides authority for NOAA research of marine environment including ocean dumping.

Where Law Applies: In the “marine environment” which is defined under the MPRSA to include the outer edge of the continental shelf and the 200 nm Exclusive Economic Zone (EEZ). NMSA also provides authority for cooperation with other nations and organizations in special marine areas outside of the United States. Enforcement is to be in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the U.S. is a party.

Of the 13 current National Marine Sanctuaries, nine are located in whole or in part beyond the U.S. 12 nautical mile territorial sea. These nine national marine sanctuaries are the Cordell Bank National Marine Sanctuary (NMS), the Florida Keys NMS, the Flower Garden Banks NMS, the Gray’s Reef NMS, the Hawaiian Islands Humpback Whale NMS, the Monitor NMS, the Monterey Bay NMS, the Olympic Coast NMS, and the Stellwagen Bank NMS. Only the Channel Islands NMS, the Fagatele Bay NMS, and the Gulf of the Farallones NMS are entirely within the U.S. territorial sea. Thunder Bay NMS is located entirely within U.S. internal waters (Lake Huron).

Summary:

Originally enacted as Title III of the Marine Protection, Research and Sanctuaries Act of 1972, the National Marine Sanctuaries Act (NMSA) ([16 U.S.C. § 1431, *et seq.*](#)) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities as national marine sanctuaries. National marine sanctuaries consist of designated marine waters and submerged lands and can extend up to the mean high water line. The National Marine Sanctuary System comprises 13 sanctuaries and their day-to-day management has been delegated by the Secretary of Commerce to NOAA’s Office of National Marine Sanctuaries. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

The NMSA provides several tools for protecting designated national marine sanctuaries. For example—

- The NMSA provides the program with the authority to issue [regulations](#) for each sanctuary and the system as a whole. These regulations can, among other things, specify the types of activities that can and cannot occur within the sanctuary (16 U.S.C. § 1439). Permits may be issued for activities that are otherwise prohibited.
- The NMSA requires the program to prepare and periodically update management plans that guide day-to-day activities at each sanctuary (16 U.S.C. § 1434(a) & (e)).
- The NMSA authorizes NOAA and the program to assess civil penalties (up to \$140,000 per day per violation) for violations of the NMSA or its implementing regulations and damages against people that injure sanctuary resources (16 U.S.C. §§ 1436, 1437, & 1443).
- The NMSA requires federal agencies whose actions are “likely to destroy, cause the loss of, or injure a sanctuary resource,” to consult with the program before taking the action. The program is, in these cases, required to recommend reasonable and prudent alternatives to protect sanctuary resources (16 U.S.C. § 1434(d)).

Source: <http://sanctuaries.noaa.gov/about/legislation/welcome.html>, last visited April 11, 2013.

Legislative History:

Legislation leading to the development of the National Marine Sanctuary Program can be traced to 11 bills introduced in the House of Representatives in 1968. These bills were introduced in response to a public outcry from two major incidents which resulted in the degradation of popular, recreational marine areas; the dumping of nerve gas and oil wastes off the coast of Florida, and an oil spill off the coast of Santa Barbara from a oil platform. (Virginia Institute of Marine Sciences, *Marine and Estuarine Sanctuaries*, Report No. 70, at 9 (1973)). As noted by the Virginia Institute of Marine Sciences: “The concept of sanctuaries as areas for studies of natural systems unencumbered by pollution was brought forward as was the concept of preserving marine areas so that scenic beauty, ocean recreation, and fishing activities could be perpetuated.” (*Id.* at 9). Thus, protecting and managing special areas for use by present and future generations was a driving force at the earliest stages of developing the sanctuary program.

The bills also proposed to set aside areas of the marine environment where no pollution activities would be permitted. (*Id.*; *See also* Michael C. Blumm and Joel G. Blumstein, *The Marine Sanctuaries Program: A Framework for Critical Area Management in the Sea*, 8 E.L.R. 50016, 50018 (1978)). The bills were never reported out of the House Merchant Marine and Fisheries Committee during the 90th Congress because of opposition by the oil and gas industry to the bills’ emphasis on preventing the exploration and development of oil, gas and minerals in sanctuaries. (A. Bakalian, *Regulation and Control of United States Ocean Dumping: A Decade of Progress, An Appraisal for the Future*, 8 HARV. ENVIR. L.R. 193-95 (1984)).

Public concern about the threat to the marine environment from ocean dumping resulted in a study by the Council on Environmental Quality (CEQ) which was completed in 1970. (U.S. Council on Environmental Quality, *Ocean Dumping: A National Policy*, 12-18 (1970)). Briefly,

the report stated that marine pollution had seriously degraded the marine environment and endangered human health because of the effects on fisheries and recreation use areas. (Bakalian, at 207; [S. Rep. No. 92-451](#), 92d Cong., 1st Sess. 1 (1971)). The CEQ called for the development of strong domestic law and international cooperation. Early in the following year, the Nixon Administration submitted to the Senate a draft bill prepared by EPA to regulate ocean dumping. (Blumm and Blumstein, at 50018).

As a result of the 1970 CEQ Report, the House Committee of the 92nd Congress reported a marine sanctuaries provision and incorporated it into H.R. 9727. ([H.R. Rep. No. 92-361](#), 92nd Cong., 1st Sess. 15 (1971)). It determined that Congress should address “the need to create a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man.” (*Id.*). It went on to state that “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.” (*Id.*). Thus, the threat of pollution from the oil, gas and mineral development, as well as dumping, would be minimized by not permitted such activities to occur in sanctuaries.

Upon consideration of H.R. 9727, there was repeated reference to the position that sanctuaries were to be areas isolated from ocean dumping. Representative Forsythe, in declaring his support for Title III, stated that “the bill provides for establishment of ocean sanctuaries where no defilement by pollution will be permitted whatsoever.” (Cong. Rec. H8192 (1971)). Similarly, Representative Frey stated that “the philosophy of establishing marine sanctuaries is that instead of designating areas where dumping may be conducted safely, we should determine which areas of our marine environment are most valuable and set them aside as sanctuaries.” (*Id.* at 8193). Representative Murphy recognized the need to save our water resources from the depredations of human beings, and suggested that the key to the effectiveness of H.R. 9727 is the “‘no-dumping’ marine sanctuary aspect of [the] legislation.” (*Id.* at 8249).

H.R. 9727 was passed in the House on September 9, 1971 and then considered by the Senate Commerce Committee. On November 4, 1971, the Senate passed a version of the House bill which was amended so as to exclude Title III. Concerns about jurisdiction under Title III over the superjacent water column outside the limits of the territorial sea and the contiguous zone were raised by the Senate Commerce Committee. Additionally, it was argued that Title I and the Outer Continental Shelf Lands Act (OCSLA) already provided sufficient authority to protect certain areas of the continental shelf. ([S. Rep. No. 92-451](#), 92d Congress, 1st Sess. 15 (1971)). However, authority to prevent dumping by EPA does not provide authority for comprehensive protection from the threat of pollution from other sources. The authority given to the Secretary of Commerce under Title III to protect these areas is considerably broader than that given to the Secretary of the Interior under OCSLA. Ultimately, the Senate agreed to the House version of H.R. 9727 with only minor modifications concerning the applicability to foreign citizens. On October 23, 1972, a compromise version of Title III of H.R. 9727 was [signed into law](#) as a result of a bill designed by the Conference Committee on October 9, 1972. ([H.R. Rep. No. 92-1546](#), 92d Congress, 2d Sess. (1972)).

Source: Reproduced in part from: Ole Varmer & Amy J. Santin, [*Ocean Management under the Marine Protection, Research and Sanctuaries Act: Sanctuaries, Dumping and Development*](#), Coastal Zone 93 Conference Proceedings (July 19-23, 1993).

Landmark Cases:

- *Craft v. National Park Service*, [34 F.3d 918 \(9th Cir. 1994\)](#), *aff'd* [No. 92-1769 \(C.D. Cal. 1992\)](#), *aff'd* 6 O.R.W. 684 and 687 (NOAA App. 1992). (See [case summary](#)).
 - *Court Records, Briefs, or Filings:*
 - Craft, [Agency's Opening Brief for Department of Commerce Administrative Law Judge](#) (1989).
 - Craft, [Plaintiffs' Motion for Summary Judgment](#) (C.D. Cal. 1992).
 - Craft, [Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment](#) (C.D. Cal. 1992).
 - Craft, [Plaintiffs' Appendix to Their Motion for Summary Judgment](#) (C.D. Cal. 1992).
 - Craft, [Plaintiffs' Motion for Enlargement of Time](#) (C.D. Cal. 1992).
 - Craft, [Federal Defendants' Opposition to Plaintiff's Motion for Summary Judgment](#) (C.D. Cal. 1992).
 - Craft, [Defendant's Statement of Genuine Issues as to Plaintiff's Motion for Summary Judgment](#) (C.D. Cal. 1992).
 - Craft, [Appellant's Opening Brief](#) (9th Cir. 1993).
 - Craft, [Brief for the United States](#) (9th Cir. 1993).
- *Gary Gentile*, [6 O.R.W. 285c](#) (NOAA) 1990; [6 O.R.W. 285A](#) (NOAA) 1990. (See [case summary](#)).
- *Peter E. Hess*, [6 O.R.W. 720a](#) (1992). (See [case summary](#)).
- *United States v. Fisher*, [977 F. Supp. 1193](#) (S.D. Fla. 1997). (See case summary).
- *United States v. Fisher*, [977 F. Supp. 1193](#) (S.D. Fla. 1997). (See case summary).
 - Fisher, [Findings of Fact and Conclusions of Law](#) (S.D. Fla. 1997).
 - Fisher, [Judgment Case No. 92-10027 and 95-10051](#) (S.D. Fla. 1997).
 - Fisher, [Order Denying Defendants' Motions](#) (S.D. Fla. 1997).
 - Fisher, [Order on Summary Judgment](#) (S.D. Fla. 1997).
 - *Court Records, Briefs, or Filings:*
 - Fisher, [United States' Notice of Filing Expert Report](#) (S.D. Fla. 1997).
 - Fisher, [Testimony by Dr. Robert Baer, Contract Archaeologist](#) (1997).
 - Fisher, [United States' Motion for Summary Judgment](#) (S.D. Fla. 1997).
 - Fisher, [Response in Opposition to United States' Summary Judgment Motion](#) (S.D. Fla. 1997).
 - Fisher, [Defendants' Motion for New Trial and/or Alternative Relief](#) (S.D. Fla. 1997).
 - Fisher, [Defendants' Memorandum of Law in Support of Motion for New Trial](#) (S.D. Fla. 1997).
 - Fisher, Defendants' Reply to Government's Opposition for New Trial (S.D. Fla. 1997).

- Fisher, Defendants' Supplemental Objection to Plaintiffs' Proposed Order (S.D. Fla. 1997).
- Fisher, [Initial Brief for Appellants](#) (11th Cir. 1998).
- Fisher, [Reply Brief for Appellants](#) (11th Cir. 1998).
- Fisher, [Petition for Rehearing of Appellants](#) (11th Cir. 1999).
- Fisher, [Appellants' Petition for Rehearing Denied](#) (11th Cir. 1999).
- Fisher, [Petitioners' Petition for Writ of Certiorari to 11th Cir. Ct of Appeals](#).

Law Articles:

- Ole Varmer & Amy J. Santin, [Ocean Management under the Marine Protection, Research and Sanctuaries Act: Sanctuaries, Dumping and Development](#), Coastal Zone 93 Conference Proceedings (July 19-23, 1993).
- William J. Chandler & Hannah Gillelan, *The History and Evolution of the National Marine Sanctuaries Act*, 34 ENVTL. L. REV. 10505 (2004). [Part 1](#), [Part 2](#), and [Part 3](#).
- William J. Chandler, [The Future of the National Marine Sanctuaries Act in the Twenty-First Century](#), Thesis submitted to John Hopkins Univ. (May 2006).
- Ole Varmer, *The Case against the Salvage of the Cultural Heritage*, J. Mar. L. & Com. 279 (1999).

Other Relevant Sources:

- NOAA's [website](#) for National Marine Sanctuaries
- List of [all regulatory actions](#) taken by NOAA's Office of National Marine Sanctuaries since its inception
- [Timeline](#) of sanctuary designations and expansions
- [Frequently Asked Questions](#) about National Marine Sanctuaries
- [Management Information](#) for National Marine Sanctuaries (permits, consultations, conservation, management plan reviews, system development).
- [Maritime Heritage & National Marine Sanctuaries](#)
- [Library](#) of National Marine Sanctuary documents