

M E M O R A N D U M

TO: Council, SSC, and AP Members

FROM: Jim H. Branson
Executive Director

DATE: July 18, 1983

SUBJECT: Amendment to Title III of the Marine Protection, Research,
and Sanctuaries Act of 1972, H.R. 2062

ACTION REQUIRED

Review proposed legislation and prepare comments for submission to Congress.

BACKGROUND

On June 16, 1983 you were sent a copy of H.R. 2062 (copy included here as Attachment A) which amends Title III of the Marine Protection, Research, and Sanctuaries Act of 1972. This proposal was introduced on March 11, 1983 and passed the House on June 14, 1983 (379 votes in favor, 38 votes against). It is currently before the Senate Committee on Commerce, Science and Transportation.

The purpose of the Bill is to reauthorize the National Marine Sanctuary Program for three years, to eliminate the current confusion regarding the purposes of this program and to improve the sanctuary designation process. H.R. 2062 also clarifies the Congressional intent for the program through explicit statements of purposes and policies, sets standards by which the Secretary of Commerce is to assess an area for potential designation as a sanctuary, establishes procedures for sanctuary designation and amends current Congressional and gubernatorial review procedures.

Statement of Purposes and Policies

H.R. 2062, Section 301(b), provides the following as the purposes and policies of the legislation:

- "(1) To identify areas of the marine environment of special national significance due to their resource or human-use values;
- (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas which will complement existing regulatory authorities;
- (3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine area;
- (4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and,

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

Designation Standards

Under Section 303(a), before the Secretary of Commerce can designate a "discrete area" of the marine environment as a national marine sanctuary, a finding must be made that the area meets the following three standards:

- (1) The area's resource or human-use values give it special national significance;
- (2) State and Federal regulatory and management schemes are not adequate to provide for coordinated and comprehensive management of the area;
- (3) The proposed sanctuary is of a size and nature which will allow comprehensive and coordinated conservation management.

When making the above-referenced findings, the Secretary, in accordance with Section 303(b)(1), must consider the following factors:

- (1) Resource values;
- (2) Human-use values;
- (3) Management concerns;
- (4) Impacts of present and potential activities; and,
- (5) Public benefits of sanctuary status.

In determining whether an area meets the designation standards, the Secretary is required by Section 303 (b)(2) to consult with the House Committee on Merchant Marine and Fisheries, the Senate Committee on Commerce, Science and Transportation, the Secretaries of State, Defense, Transportation, and Interior and other interested Federal agencies, as well as the appropriate state officials and any Regional Fishery Management Council or other persons or groups that may have an interest in or be affected by the designation. This process is intended to address criticism of inadequate consultation under the current program. A recent example of this inadequacy may be found in the 1982 site evaluation program conducted here in Alaska. A major problem with that program, and one that led to its termination, was the failure by NOAA and its contractor, Chelsea Int'l Corporation to fully consult with all parties concerned.

Designation Procedures

Section 304 of the Bill establishes a new process that must be followed in proposing that an area be designated a marine sanctuary. A notice of the proposed designation, along with draft implementing regulations, must be published in the Federal Register. A notice must also be published in the media in the area affected by the proposed designation. Concurrent with the notice publication, the Secretary must submit a prospectus on the proposal to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science and Transportation. The Congressional committees have a 45-day review period and may hold hearings on the proposal.

Section 304(b)(3) allows the appropriate Regional Fishery Management Council the opportunity to draft regulations for fishing within a proposed sanctuary area that lies within the Fishery Conservation Zone. In preparing these regulations, the Council is to be guided by the National Standards of Section 301(A) of the Magnuson Fishery Conservation and Management Act. If the Council declines or fails to draft fishery regulations within a "timely manner," the Secretary must prepare regulations if he/she determines they are necessary to implement the designation. The Secretary of Commerce, after consultation with the appropriate state authorities, is also responsible for drafting fishery regulations for any portion of a proposed sanctuary that lies within state waters.

At present, the Secretary drafts all regulations concerning a proposed sanctuary and the appropriate Regional Fishery Management Council only participates in the consultation process. Under the proposed amendment, the Councils could assume a more active role in the Sanctuaries Program.

Review Procedures

Under Section 304(b) of the proposed legislation, in order to designate a sanctuary, the Secretary of Commerce is required to publish a notice of designation and final regulations in the Federal Register and submit the notice and regulations to Congress. The designation and regulations are not to take effect until after a 90-day disapproval period that begins on the date of publication. During this time period, Congress may disapprove a designation or any of its terms through the concurrent resolution process. If a sanctuary is located entirely or partially within a state's waters, the Governor of the state affected may, during the 90 days, certify that the designation or any of its terms are unacceptable. A designation or terms so certified will not take effect in the area of the sanctuary within state waters.

The Secretary may, at his discretion, withdraw the entire designation if Congress disapproves the designation or any of its terms or the Governor certifies any terms of a designation are unacceptable.

At present, the period for expression of Congressional or gubernatorial disapproval is 60 days. (Title III Section 302(b)(2)(A),(h)(1), P.L. 92-532) Another significant change contained in the proposed legislation is that Congressional disapproval does not prevent a designation or any of its terms from taking effect. Under the current program, if the Secretary does not withdraw a designation after a concurrent resolution of disapproval, only those parts of a designation not disapproved take effect (Title III, Section 302(b)(2), P.L. 92-532).

To date, only one member of the Alaska Congressional Delegation has taken an official position on the proposed legislation. Included as Attachment B are the dissenting views of Congressman Young as printed in the House Committee Report on the legislative proposal.

Should the Council wish to submit comments on the legislation, it is suggested they be prepared immediately following this meeting. It appears the Bill will be considered by the Senate prior to August adjournment.

98TH CONGRESS
1ST SESSION

H. R. 2062

[Report No. 98-187, Part I]

To amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1983

Mr. D'AMOURS (for himself and Mr. PRITCHARD) introduced the following bill:
which was referred to the Committee on Merchant Marine and Fisheries

MAY 16, 1983

Additional sponsors: Mr. BREAUX, Mr. JONES of North Carolina, Mr. FORSYTHE, Mr. STUDDS, Mr. OBERSTAR, Mr. HUGHES, Mr. SUNIA, Mr. HERTEL of Michigan, Mr. LIPINSKI, Mrs. BOXER, Mrs. SCHNEIDER, Mr. BELENSON, Mr. SMITH of Florida, Mr. THOMAS of Georgia, Mr. GUARINI, Mr. RATCHFORD, Mr. PANETTA, Mr. MCKINNEY, Mr. EDGAR, Mr. LOWRY of Washington, Mr. BENNETT, Mr. HEFTEL of Hawaii, Mr. GOWARD, Mr. FEIGHAN, and Mr. FAZIO

MAY 16, 1983

Reported with an amendment, referred to the Committee on the Judiciary for a period ending not later than June 15, 1983, for consideration of such provisions of the bill and amendment as fall within that committee's jurisdiction pursuant to clause 1(m), rule X, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That title III of the Marine Protection, Research, and Sanc-*
4 *tuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended to*
5 *read as follows:*

6 ~~"TITLE III—NATIONAL MARINE SANCTUARIES~~

7 ~~"SEC. 301. FINDINGS, PURPOSES, AND POLICIES.~~

8 ~~"(a) FINDINGS.—The Congress finds that—~~

9 ~~"(1) this Nation historically has recognized the~~
10 ~~importance of protecting special areas of its public~~
11 ~~lands, but such efforts have been directed almost exclu-~~
12 ~~sively to land areas above the high water mark;~~

13 ~~"(2) certain areas of the marine environment pos-~~
14 ~~sess conservation, recreational, ecological, historical,~~
15 ~~research, educational, or esthetic qualities which give~~
16 ~~them special national or regional significance;~~

17 ~~"(3) while the need to control the effects of par-~~
18 ~~ticular activities has led to enactment of resource-spe-~~
19 ~~cific legislation, these laws cannot provide a coordinat-~~
20 ~~ed and comprehensive areawide approach to the man-~~
21 ~~agement of special marine environments;~~

22 ~~"(4) a Federal program which identifies and com-~~
23 ~~prehensively manages special marine environments will~~
24 ~~contribute positively to marine resource development~~
25 ~~and conservation; and~~

1 “(5) such a Federal program will also serve to en-
2 hance public awareness, understanding, appreciation,
3 and wise use of the marine environment through public
4 educational, recreational, and research programs.

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

7 “(1) to establish a system of national marine sanc-
8 tuaries, by identifying marine environments of special
9 significance due to their conservation, recreational,
10 ecological, historical, research, educational, or esthetic
11 value;

12 “(2) to provide authority for comprehensive
13 areawide management of these environments which
14 will complement existing regulatory authority in order
15 to protect or restore sanctuary resources;

16 “(3) to support, promote, and coordinate scientific
17 research on, and monitoring of, the conditions of sanc-
18 tuary resources, in order to expand scientific knowl-
19 edge of significant marine resources and improve man-
20 agement decisionmaking;

21 “(4) to enhance public awareness, understanding,
22 appreciation and wise use of the marine environment
23 through public interpretative and recreational pro-
24 grams; and

1 “(5) to facilitate, to the extent compatible with
2 the primary objective of resource protection, all public
3 and private uses of sanctuary resources not prohibited
4 pursuant to other authorities.

5 “SEC. 302. DEFINITIONS.

6 “Notwithstanding the provisions of subsection (h) of sec-
7 tion 3 of this Act, as used in this title—

8 “(1) The term ‘marine environment’ means—

9 “(A) the ocean waters and the continental
10 shelf over which the United States asserts juris-
11 diction for purposes of regulating living and non-
12 living marine resources; and

13 “(B) the Great Lakes and their connecting
14 waters.

15 “(2) The term ‘Secretary’ means the Secretary of
16 Commerce.

17 “(3) The term ‘State’ means any of the several
18 States or any territory or possession of the United
19 States which has a popularly elected Governor.

20 “SEC. 303. SANCTUARY DESIGNATION STANDARDS.

21 “(a) STANDARDS.—The Secretary, upon approval of the
22 President, may designate any area of the marine environment
23 as a national marine sanctuary if the Secretary determines
24 that such designation will fulfill the purposes and policies of
25 this title, and if the Secretary finds that—

1 “(1) the area is of special significance due to its
2 conservation, recreational, ecological, historical, re-
3 search, educational, or esthetic value;

4 “(2) existing State and Federal regulatory and
5 management authorities are inadequate to assure co-
6 ordinated and comprehensive management of the area,
7 including provisions for resource protection, scientific
8 research and public education, and that inclusion
9 within the system of national marine sanctuaries will
10 facilitate these objectives; and

11 “(3) the area is of a size and nature which indi-
12 cates that it will be amenable and responsive to the
13 comprehensive areawide management.

14 “(b) FACTORS AND CONSULTATIONS REQUIRED IN
15 MAKING FINDINGS.—For purposes of deciding whether or
16 not an area of the marine environment meets the standards
17 listed in subsection (a) (1), (2), and (3), the Secretary shall—

18 “(1) take into consideration—

19 “(A) the value of the area's inherent natural
20 resource and ecological qualities; including its
21 contribution to biological productivity; mainte-
22 nance of ecosystem structure; maintenance of eco-
23 logically or commercially important or threatened
24 species or species assemblages; and the bioge-
25 ographic representation of the site;

1 “(B) the area’s significance as a resource of
2 historical, cultural, archaeological, or paleonto-
3 logical value;

4 “(C) the present and potential human-use
5 values that are dependent on maintenance of the
6 area’s resources; including commercial and recre-
7 ational fishing, other recreational activities, and
8 research and educational opportunities;

9 “(D) present and potential activity impacts
10 that may adversely affect the resource qualities
11 identified in subparagraphs (A), (B), and (C);

12 “(E) the existing State and Federal regula-
13 tory and management authorities applicable to the
14 area and the ability or inability of those authori-
15 ties to fulfill the purposes and policies of this title;

16 “(F) the manageability of the area, including
17 such determining factors as its size, its ability to
18 be identified as a discrete ecological unit with de-
19 finable boundaries, its accessibility, and its suit-
20 ability for surveillance and enforcement; and

21 “(G) the public benefits to be derived from
22 sanctuary status, giving emphasis to the benefits
23 of long-term protection of commercially significant
24 resources, vital habitats and resources which gen-
25 erate tourism, to the negative impacts produced

1 by management restrictions on income generating
2 activities such as mineral development, and to the
3 socioeconomic effects of sanctuary designation;
4 and

5 "(2) consult with—

6 "(A) the Committee on Merchant Marine and
7 Fisheries in the House of Representatives and the
8 Committee on Commerce, Science, and Transpor-
9 tation in the Senate,

10 "(B) the Secretaries of State, Defense, and
11 Transportation, the Secretary of the Interior, the
12 Administrator, and the heads of other interested
13 Federal agencies,

14 "(C) the responsible officials of any State
15 that will be affected by the establishment of the
16 area as a national marine sanctuary, and

17 "(D) the appropriate officials of any Regional
18 Fishery Management Council established by sec-
19 tion 302 of the Magnuson Fishery Conservation
20 and Management Act of 1976 (16 U.S.C. 1852)
21 that may be affected by such designation, and

22 "(E) other interested persons.

23 "SEC. 304. IMPLEMENTATION OF DESIGNATIONS.

24 "(a) DEFINITIONS.—For purposes of this section—

1 “(1) The term ‘Congressional review period’
2 means, with respect to a sanctuary designation made
3 under subsection (b), the one hundred and twenty-day
4 period, beginning on the designation date of the sanc-
5 tuary, of continuous session of the Congress. In deter-
6 mining such one hundred and twenty-day period—

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

9 “(B) the days on which either House is not
10 in session because of an adjournment of more than
11 three days to a day certain are excluded.

12 “(2) The term ‘resolution of disapproval’ means—

13 “(A) if the designation of an area as a na-
14 tional marine sanctuary is to be disapproved a
15 concurrent resolution the matter after the resolv-
16 ing clause of which is as follows: “That the Con-
17 gress does not approve the national marine sanc-
18 tuary designation entitled that was
19 submitted to Congress by the Secretary of Com-
20 merce on , the first blank space
21 being filled with the title of the designation and
22 the second blank space being filled with the date
23 on which the notice was submitted to Congress;
24 or

1 “(B) if the designation of an area as a na-
 2 tional marine sanctuary is not disapproved but
 3 one or more terms of the designation are to be
 4 disapproved, a concurrent resolution the matter
 5 after the resolving clause of which is as follows:
 6 “That the Congress approves the national marine
 7 sanctuary designation entitled that
 8 was submitted to Congress by the Secretary of
 9 Commerce on ; but disapproves the
 10 following terms of such designation:
 11 ; the first blank space being filled
 12 with the title of the designation, the second blank
 13 space being filled with the date on which the
 14 notice was submitted to Congress, and the third
 15 blank space being filled with the text of each term
 16 of the designation which is disapproved.

17 “(b) DESIGNATION PROCEDURES.—(1) An area of the
 18 marine environment shall be considered to be designated as a
 19 national marine sanctuary if, on the same day (hereinafter
 20 referred to as the ‘designation date’), the Secretary—

21 “(A) publishes in the Federal Register notice of
 22 such designation, appropriately titled, together with the
 23 terms of the designation; and

24 “(B) submits to each House of Congress a copy of
 25 such notice and terms together with—

1 “(i) an analysis of the findings made with re-
2 spect to the designated area under section 203(a);

3 “(ii) proposed mechanisms to coordinate ex-
4 isting regulatory and management authorities
5 within such area;

6 “(iii) a management plan detailing goals and
7 objectives, management responsibilities, resource
8 studies, interpretive and educational programs,
9 and enforcement and surveillance activities for
10 such area;

11 “(iv) draft regulations which will be proposed
12 for adoption under section 205(1); and

13 “(v) an estimate of annual management costs
14 of such area, including costs of personnel, equip-
15 ment and facilities, enforcement, research, and
16 public education.

17 “(2) The terms of a designation shall include, among
18 other things, the geographic area included within the pro-
19 posed sanctuary, the characteristics of the area that give it
20 conservation, recreational, ecological, or esthetic value, and
21 the types of activities that will be subject to regulation by the
22 Secretary in order to protect those characteristics.

23 “(c) TAKING EFFECT OF DESIGNATIONS.—The desig-
24 nation of a national marine sanctuary under subsection (b)

1 shall take effect after the closing date of the congressional
2 review period unless—

3 “(1) the Congress disapproves the designation by
4 adopting a resolution of disapproval described in sub-
5 section (a)(2)(A) before the close of the congressional
6 review period;

7 “(2) in the case of a designated area that is locat-
8 ed entirely within the waters over which one or more
9 States have jurisdiction, the Governor of the State, or
10 the Governors of each of such States, as the case may
11 be, certify to the Secretary, within the sixty-day period
12 beginning on the designation date of the sanctuary,
13 that the designation is unacceptable to the State; or

14 “(3) the Secretary withdraws the designation
15 under subsection (d)(3).

16 “(d) DISAPPROVAL OF TERMS OF DESIGNATION.—(1)
17 No term of a designation that is submitted to the Congress
18 under subsection (b)(1)(B) shall take effect if the Congress
19 disapproves the term by adopting a resolution of disapproval
20 described in subsection (a)(2)(B), for such term, before the
21 close of the congressional review period.

22 “(2) A term of designation shall not take effect within
23 any portion of a national marine sanctuary that is within the
24 jurisdiction of a State if the Governor of the State certifies to
25 the Secretary, within the sixty-day period beginning on the

1 designation date of the sanctuary, that the application of such
2 term within such portion is unacceptable to the State.

3 “(3) If the Secretary considers that action taken under
4 paragraph (1) or (2), or both, will affect the designated area
5 in such a manner that the purposes and policies of this title
6 cannot be fulfilled within such area, the Secretary may with-
7 draw the designation.

8 “(e) PUBLICATION UPON TAKING EFFECT.—The Sec-
9 retary shall publish in the Federal Register the designation of
10 each national marine sanctuary that takes effect under this
11 title, together with the terms of the designation that are
12 effective.

13 ~~“SEC. 305. REGULATIONS AND NEGOTIATIONS.~~

14 ~~“With respect to each designation of a national marine
15 sanctuary that takes effect under section 301—~~

16 ~~“(1) the Secretary, after consultation with other
17 interested Federal and State agencies, shall issue nec-
18 essary and reasonable regulations to implement the
19 terms of the designation and control the activities de-
20 scribed in it, except that all permits, licenses, and
21 other authorizations issued under any other authority
22 that pertain to activities carried out within the sanctu-
23 ary shall be valid unless such regulations otherwise
24 provide; and~~

1 “(2) the Secretary of State, if the sanctuary in-
2 cludes an area of water beyond the territorial jurisdic-
3 tion of the United States, shall take such action as
4 may be appropriate to enter into negotiations with
5 other Governments for the purpose of arriving at nec-
6 essary arrangements with those Governments for the
7 protection of the sanctuary and to promote the pur-
8 poses for which it was established.

9 “SEC. 306. RESEARCH.

10 “The Secretary shall conduct such research and educa-
11 tional programs as are necessary and reasonable to carry out
12 the purposes and policies of this Act.

13 “SEC. 307. ANNUAL REPORT ON AREAS BEING CONSIDERED
14 FOR DESIGNATION.

15 “The Secretary shall submit a report to the Congress on
16 or before November 1 of each year, setting forth information
17 on those sites which the Secretary will be actively consider-
18 ing for sanctuary designation in the current fiscal year. Such
19 information for each site shall include, to the extent available
20 at time of submission, the following:

21 “(1) A description of the resources and other
22 values which makes the site nationally significant.

23 “(2) Present and potential human uses.

24 “(3) Impacts of present and potential activities.

1 “(4) Existing State and Federal regulatory and
2 management authorities.”

3 “(5) Boundary options.”

4 “(6) Regulatory options.”

5 “(7) Potential research and educational benefits.”

6 **“SEC. 308. ENFORCEMENT.**

7 “(a) **IN GENERAL.**—The Secretary and the Secretary of
8 the department in which the Coast Guard is operating shall
9 conduct such enforcement activities as are necessary and rea-
10 sonable to carry out this title. The Secretary shall, whenever
11 appropriate and in consultation with the Secretary of the de-
12 partment in which the Coast Guard is operating, utilize by
13 agreement the personnel, services, and facilities of other Fed-
14 eral departments, agencies, and instrumentalities, or State
15 agencies or instrumentalities, whether on a reimbursable or
16 nonreimbursable basis in carrying out his responsibilities
17 under this title.

18 “(b) **CIVIL PENALTIES.**—(1) Any person subject to the
19 jurisdiction of the United States who violates any regulation
20 issued under this title shall be liable to a civil penalty of not
21 more than \$50,000 for each such violation, to be assessed by
22 the Secretary. Each day of a continuing violation shall con-
23 stitute a separate violation.

24 “(2) No penalty shall be assessed under this subsection
25 until the person charged has been given notice and an oppor-

1 tunity to be heard. Upon failure of the offending party to pay
 2 an assessed penalty, the Attorney General, at the request of
 3 the Secretary, shall commence action in the appropriate dis-
 4 trict court of the United States to collect the penalty and to
 5 seek such other relief as may be appropriate.

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

11 “(e) JURISDICTION.—The district courts of the United
 12 States shall have jurisdiction to restrain a violation of the
 13 regulations issued under this title, and to grant such other
 14 relief as may be appropriate. Actions shall be brought by the
 15 Attorney General in the name of the United States, either on
 16 his own initiative or the request of the Secretary.

17 “SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

18 “To carry out this title, there are authorized to be ap-
 19 propriated not to exceed the following sums:

20 “(1) \$2,264,000 for fiscal year 1984.

21 “(2) \$2,500,000 for fiscal year 1985.

22 “(3) \$2,750,000 for fiscal year 1986.”.

23 *That title III of the Marine Protection, Research, and Sanc-*
 24 *turies Act of 1972 (16 U.S.C. 1431 et seq.) is amended to*
 25 *read as follows:*

1 *"TITLE III—NATIONAL MARINE SANCTUARIES*2 *"SEC. 301. FINDINGS, PURPOSES, AND POLICIES.*3 *"(a) FINDINGS.—The Congress finds that—*4 *"(1) this Nation historically has recognized the*
5 *importance of protecting special areas of its public*
6 *domain, but such efforts have been directed almost ex-*
7 *clusively to land areas above the high-water mark;*8 *"(2) certain areas of the marine environment pos-*
9 *sess conservation, recreational, ecological, historic, re-*
10 *search, educational, or esthetic qualities which give*
11 *them special national significance;*12 *"(3) while the need to control the effects of partic-*
13 *ular activities has led to enactment of resource-specific*
14 *legislation, these laws cannot in all cases provide a co-*
15 *ordinated and comprehensive approach to the conserva-*
16 *tion and management of special areas of the marine*
17 *environment;*18 *"(4) a Federal program which identifies special*
19 *areas of the marine environment will contribute posi-*
20 *tively to marine resource conservation and manage-*
21 *ment; and*22 *"(5) such a Federal program will also serve to en-*
23 *hance public awareness, understanding, appreciation,*
24 *and wise use of the marine environment.*

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

3 “(1) *to identify areas of the marine environment*
4 *of special national significance due to their resource or*
5 *human-use values;*

6 “(2) *to provide authority for comprehensive and*
7 *coordinated conservation and management of these*
8 *marine areas which will complement existing regula-*
9 *tory authorities;*

10 “(3) *to support, promote, and coordinate scientific*
11 *research on, and monitoring of, the resources of these*
12 *marine areas;*

13 “(4) *to enhance public awareness, understanding,*
14 *appreciation, and wise use of the marine environment;*
15 *and*

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

20 *“SEC. 302. DEFINITIONS.*

21 *“For the purposes of this title, the term—*

22 “(1) *‘marine environment’ refers to those areas of*
23 *coastal and ocean waters, the Great Lakes and their*
24 *connecting waters, and submerged lands over which the*

1 *United States exercises jurisdiction, consistent with in-*
2 *ternational law;*

3 *“(2) ‘Secretary’ refers to the Secretary of Com-*
4 *merce; and*

5 *“(3) ‘State’ refers to each of the several States,*
6 *the District of Columbia, the Commonwealth of Puerto*
7 *Rico, American Samoa, the Virgin Islands, Guam,*
8 *and any other commonwealth, territory, or possession*
9 *of the United States.*

10 **“SEC. 303. SANCTUARY DESIGNATION STANDARDS.**

11 *“(a) STANDARDS.—The Secretary may designate any*
12 *discrete area of the marine environment as a national marine*
13 *sanctuary and promulgate regulations implementing the des-*
14 *ignation if the Secretary determines that such designation*
15 *will fulfill the purposes and policies of this title, and if the*
16 *Secretary finds that—*

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

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

1 “(3) the area is of a size and nature which will
2 permit comprehensive and coördinated conservation and
3 management.

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

8 “(1) take into consideration—

9 “(A) the area’s natural resource and ecologi-
10 cal qualities; including its contribution to biologi-
11 cal productivity, maintenance of ecosystem struc-
12 ture, maintenance of ecologically or commercially
13 important or threatened species or species assem-
14 blages, and the biogeographic representation of the
15 site;

16 “(B) the area’s historic, cultural, archae-
17 ological, or palcontological significance;

18 “(C) the present and potential uses of the
19 area that depend on maintenance of the area’s re-
20 sources; including commercial and recreational
21 fishing, other commercial and recreational activi-
22 ties, and research and education;

23 “(D) present and potential activities that
24 may adversely affect the factors identified in sub-
25 paragraphs (A), (B), and (C);

1 “(E) the existing State and Federal regula-
2 tory and management authorities applicable to the
3 area and the adequacy of those authorities to ful-
4 fill the purposes and policies of this title;

5 “(F) the manageability of the area; including
6 such factors as its size, its ability to be identified
7 as a discrete ecological unit with definable bound-
8 aries, its accessibility, and its suitability for mon-
9 itoring and enforcement activities;

10 “(G) the public benefits to be derived from
11 sanctuary status, giving emphasis to the benefits
12 of long-term protection of nationally significant
13 resources, vital habitats, and resources which gen-
14 erate tourism;

15 “(H) the negative impacts produced by man-
16 agement restrictions on income-generating activi-
17 ties, such as living and nonliving resource devel-
18 opment; and

19 “(I) the socioeconomic effects of sanctuary
20 designation; and

21 “(2) consult with—

22 “(A) the Committee on Merchant Marine
23 and Fisheries of the House of Representatives and
24 the Committee on Commerce, Science, and Trans-
25 portation of the Senate;

1 “(B) the Secretaries of State, Defense, and
2 Transportation, the Secretary of the department
3 in which the Coast Guard is operating, the Secre-
4 tary of the Interior, the Administrator, and the
5 heads of other interested Federal agencies;

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

9 “(D) the appropriate officials of any Region-
10 al Fishery Management Council established by
11 section 302 of the Act entitled, ‘An Act to provide
12 for the conservation and management of the fish-
13 eries, and for other purposes’, approved April 13,
14 1976 (90 stat. 331 et seq., 16 U.S.C. 1801 et
15 seq. (hereinafter in this title referred to as the ‘Act
16 of 1976’)) that may be affected by the designation;
17 and

18 “(E) other interested persons.

19 “SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTA-
20 TION.

21 “(a) SANCTUARY PROPOSAL.—

22 “(1) NOTICES.—In proposing to designate a na-
23 tional marine sanctuary, the Secretary shall issue in
24 the Federal Register a notice of the proposal, together
25 with proposed regulations that may be necessary and

1 reasonable to implement it, and shall provide notice of
2 the proposal in newspapers of general circulation or
3 electronic media in the communities that may be affect-
4 ed by the proposal. After issuing a notice the Secretary
5 shall conduct at least one public hearing in the area
6 affected by the proposed designation. On the same day
7 of issuing the notice, the Secretary shall also submit to
8 the Committee on Merchant Marine and Fisheries of
9 the House of Representatives and the Committee on
10 Commerce, Science, and Transportation of the Senate
11 a prospectus on the proposal which shall contain—

12 “(A) the terms of the proposed designation;

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

15 “(C) proposed mechanisms to coordinate ex-
16 isting regulatory and management authorities
17 within the area;

18 “(D) a management plan detailing the pro-
19 posed goals and objectives, management responsi-
20 bilities, resource studies, interpretive and educa-
21 tional programs, and enforcement and surveillance
22 activities for the area;

23 “(E) an estimate of annual costs of the pro-
24 posed designation, including costs of personnel,

1 *equipment and facilities, enforcement, research,*
2 *and public education; and*

3 “(F) *proposed regulations to implement the*
4 *measures referred to in subparagraphs (A), (C),*
5 *and (D).*

6 “(2) *TERMS OF DESIGNATION.—The terms of*
7 *designation of a sanctuary shall include, among other*
8 *things, the geographic area included within the sanctu-*
9 *ary, the characteristics of the area that give it conser-*
10 *vation, recreational, ecological, historical research, edu-*
11 *cational, or esthetic value, and the types of activities*
12 *that will be subject to regulation by the Secretary in*
13 *order to protect those characteristics. The terms of des-*
14 *ignation may be modified only by the same procedures*
15 *by which an original designation is made.*

16 “(3) *FISHING REGULATIONS.—The Secretary*
17 *shall provide the appropriate Regional Fishery Man-*
18 *agement Council with the opportunity to draft regula-*
19 *tions for fishing within the United States Fishery*
20 *Conservation Zone as may be necessary to implement*
21 *the proposed designation. Draft regulations prepared*
22 *pursuant to this section shall fulfill the purposes and*
23 *policies of this title and the goals and objectives of the*
24 *proposed designation. In preparing the draft regula-*
25 *tions, the Regional Fishery Management Council shall*

1 also use as guidance the national standards of section
2 301(a) of the Act of 1976 to the extent that the stand-
3 ards are consistent and compatible with the goals and
4 objectives of the proposed designation. If the Council
5 declines or fails to prepare the draft regulations in a
6 timely manner, the Secretary shall prepare them.

7 “(4) COMMITTEE ACTION.—After receiving the
8 prospectus under subsection (a)(1), the Committee on
9 Merchant Marine and Fisheries of the House of Repre-
10 sentatives and the Committee on Commerce, Science,
11 and Transportation of the Senate may each hold hear-
12 ings on the proposed designation and on the matters set
13 forth in the prospectus. If, within the forty-five-day
14 period of continuous session of Congress beginning on
15 the date of submission of the prospectus, either commit-
16 tee issues a report disagreeing with one or more mat-
17 ters addressed in the prospectus, the Secretary shall
18 consider the report before designating the national
19 marine sanctuary.

20 “(b) TAKING EFFECT OF DESIGNATIONS.—

21 “(1) In designating a national marine sanctuary
22 the Secretary shall issue a notice of the designation to-
23 gether with final regulations to implement the designa-
24 tion and any other matters required by law and submit
25 such notice to the Congress. No designation may occur

1 *until the expiration of the period for committee action*
2 *under subsection (a)(4). Such' designation and regula-*
3 *tions shall take effect after the close of a review period*
4 *of ninety days of continuous session of Congress begin-*
5 *ning on the day on which the designation notice is*
6 *issued unless—*

7 *“(A) the Congress disapproves the designa-*
8 *tion, or any of its terms, by adopting a resolution*
9 *of disapproval described in subsection (b)(3); or*

10 *“(B) in the case of a national marine sanc-*
11 *tuary that is located partially or entirely within*
12 *the jurisdiction of one or more States, the*
13 *Governor(s) affected certifies to the Secretary that*
14 *the designation or any of its terms are unaccepta-*
15 *ble. In the event of such certification, the designa-*
16 *tion or the unacceptable term shall not take effect*
17 *in the area of the sanctuary lying within the ju-*
18 *risdiction of the State.*

19 *“(2) If the Secretary considers that actions taken*
20 *under paragraphs (A) or (B) will affect the designation*
21 *in such a manner that the goals and objectives of the*
22 *sanctuary cannot be fulfilled, the Secretary may with-*
23 *draw the designation.*

24 *“(3) For the purposes of this subsection, the term*
25 *‘resolution of disapproval’ means a concurrent resolu-*

1 tion which states after the resolving clause the follow-
 2 ing: "That the Congress^s does not approve the national
 3 marine sanctuary designation entitled
 4 that was submitted to Congress by the Secretary of
 5 Commerce on .', the first blank space
 6 being filled with the title of the designation and the
 7 second blank space being filled with the date on which
 8 the notice was submitted to Congress. In the event that
 9 the disapproval is addressed to one or more terms of the
 10 designation, the resolution shall state: "That the Con-
 11 gress approves the national marine sanctuary designa-
 12 tion entitled that was submitted to
 13 Congress by the Secretary of Commerce on
 14 , but disapproves the following terms of
 15 such designation: .', the first blank
 16 space being filled with the title of the designation, the
 17 second blank space being filled with the date on which
 18 the notice was submitted to Congress, and the third
 19 blank space referencing each term of the designation
 20 which is disapproved.

21 "(4) In computing the forty-five- and ninety-day
 22 periods of continuous session of Congress pursuant to
 23 section 304(a)(4) and section 304(b)(1) respectively—

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

1 “(B) the days on which either House of Con-
2 gress is not in session because of an adjournment
3 of more than three days to a day certain are
4 excluded.

5 “(5) All permits, licenses, and other authoriza-
6 tions issued under any other authority of law that per-
7 tain to activities carried out in the area designated as
8 a national marine sanctuary shall continue to be valid
9 unless the regulations implementing the designation
10 provide otherwise.

11 “SEC. 305. INTERNATIONAL APPLICATION OF REGULATIONS
12 AND NEGOTIATIONS.

13 “(a) REGULATIONS.—The regulations issued under
14 section 304 shall be applied in accordance with recognized
15 principles of international law, including treaties, conven-
16 tions, and other agreements to which the United States is
17 signatory. Unless the application of the regulations is in ac-
18 cordance with such principles or is otherwise authorized by
19 an agreement between the United States and the foreign state
20 of which the affected person is a citizen or, in the case of the
21 crew of a foreign vessel, between the United States and flag
22 state of the vessel, no regulation applicable to areas or activi-
23 ties outside the jurisdiction of the United States shall be ap-
24 plied to a person not a citizen of the United States.

1 “(b) *NEGOTIATIONS.*—After the taking effect under
2 section 304 of a national marine sanctuary that applies to an
3 area or activity beyond the jurisdiction of the United States,
4 the Secretary of State shall take such action as may be ap-
5 propriate to enter into negotiations with other governments
6 for the purpose of arriving at necessary arrangements with
7 those governments for the protection of the sanctuary and to
8 promote the purposes for which it was established.

9 “*SEC. 306. RESEARCH AND EDUCATION.*

10 “The Secretary shall conduct such research and educa-
11 tional programs as are necessary and reasonable to carry out
12 the purposes and policies of this title.

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

15 “On or before November 1 of each year, the Secretary
16 shall submit a report to the Congress setting forth informa-
17 tion on those sites which the Secretary will be actively con-
18 sidering for sanctuary designation during the current fiscal
19 year. Such information for each site shall include, to the
20 extent available at time of submission, the following:

21 “(1) a description of the resources and other
22 values which make the site nationally significant;

23 “(2) present and potential human uses;

24 “(3) impacts of present and potential activities;

1 “(4) existing State and Federal regulatory and
2 management authorities;

3 “(5) boundary options;

4 “(6) regulatory options; and

5 “(7) potential research and educational benefits.

6 “SEC. 308. ENFORCEMENT.

7 “(a) IN GENERAL.—The Secretary shall conduct such
8 enforcement activities as are necessary and reasonable to
9 carry out this title. The Secretary shall, whenever appropri-
10 ate, utilize by agreement the personnel, services, and facilities
11 of other Federal departments, agencies, and instrumental-
12 ities, or of State departments, agencies, and instrumental-
13 ities, on a reimbursable basis in carrying out his responsibil-
14 ities under this title.

15 “(b) CIVIL PENALTIES.—

16 “(1) Any person subject to the jurisdiction of the
17 United States who violates any regulation issued
18 under this title shall be liable for a civil penalty of not
19 more than \$50,000 for each such violation, to be as-
20 sessed by the Secretary. Each day of a continuing vio-
21 lation shall constitute a separate violation.

22 “(2) No penalty shall be assessed under this sub-
23 section until the person charged has been given notice
24 and an opportunity to be heard. Upon failure of the of-
25 fending party to pay an assessed penalty, the Attorney

1 General, at the request of the Secretary, shall com-
2 mence action in the appropriate district court of the
3 United States to collect the⁴ penalty and to seek such
4 other relief as may be appropriate.

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

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

17 “SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

18 “To carry out this title, there are authorized to be appro-
19 priated not to exceed the following sums:

20 “(1) \$2,264,000 for fiscal year 1984.

21 “(2) \$2,500,000 for fiscal year 1985.

22 “(3) \$2,750,000 for fiscal year 1986.”

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DISSENTING VIEWS OF HON. DON YOUNG

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

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

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

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

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

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

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

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

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