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Before the

Subcommittee on Fisheries, Wildlife and Oceans  
House Committee on Natural Resources

Regarding

Reauthorization of the National Marine Sanctuaries Act (NMSA)

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### **Introduction**

Thank you for inviting Ocean Conservancy to present our views on the reauthorization of the National Marine Sanctuaries Act (NMSA). I greatly appreciate the opportunity to testify before this Subcommittee on an issue of such great importance to the future of the oceans. There couldn't be a more appropriate place for this kind of hearing, and I'm grateful to the Committee for bringing us all together. Ocean Conservancy is a science-based advocacy, research, and public educational organization that strives to inform and empower people to conserve the oceans. Our headquarters are located in Washington D.C., and we have offices in New England, the Southeastern Atlantic, the Gulf of Mexico, the Pacific, and the Caribbean. Ocean Conservancy has led efforts to develop and strengthen the National Marine Sanctuary Act, the National Marine Sanctuary System, and individual National Marine Sanctuaries at the national, regional, and site-specific levels for nearly 30 years.

I recently joined the Ocean Conservancy to lead its science and policy direction and am proud to be part of a talented team with a rich tradition and history on national marine sanctuaries and a breadth of other ocean conservation issues. I also have my own personal history, familiarity, and connection with the National Marine Sanctuary System (NMSS), especially California's four spectacular sanctuaries (Channel Islands, Gulf of the Farallones, Cordell Bank, and Monterey Bay), which collectively comprise nearly a third of California's remarkable coastline. I previously served as a program officer with The David and Lucile Packard Foundation in Los Altos, conducted research and taught as a member of the faculty of Environmental Studies at the University of California Santa Cruz; and I received my Ph.D. from the University of California Berkeley. During that time, I've been blessed to enjoy the benefits of California's rich ocean resources and our national marine sanctuaries to help protect them. In fact, the Monterey Bay National Marine Sanctuary is practically in my back yard; and I am constantly reminded of the foresight and wisdom that have enabled us to conserve these important areas.

The oceans are crucial to all of us, regardless of where we live; and it is a critical moment for the oceans. The Pew Oceans Commission and the U.S. Commission on Ocean Policy

clearly recognized that we must face the challenges of global climate disruption, overexploitation, and pollution in order to provide for our grandchildren the gifts from healthy, productive oceans: food, recreation and sustenance for our communities, scientific insights, not-yet-imagined benefits from the diversity of marine life, and a profound sense of mystery and wonder.

The NMSA provides tremendous potential to help us address the growing challenges and reap the benefits. Since its inception, the NMSA has recognized that certain ocean areas possess attributes or qualities that give them special significance, that such areas should be identified and managed as a national system, that they should receive comprehensive and coordinated conservation and management, and that their primary objective should be resource protection. Stated simply, the NMSA's mandate is and should be to identify and provide comprehensive, place- or ecosystem-based conservation and management to special marine areas that makes resource protection a priority.

The NMSA's emphasis on comprehensive, ecosystem-based, ocean protection makes it unique among federal programs and provides its still largely untapped potential to reverse declines in ocean ecosystems and provide special ocean places for current and future generations to enjoy and utilize. Unfortunately, the NMSS has not always fulfilled its mandate or lived up to its potential. Our NMSS has come a long way in recent years, as evidenced by successes in California, Florida, and Hawaii, but much work remains. This reauthorization process provides Congress with an unprecedented opportunity to build on these successes, release the NMSS's potential, and ensure that it lives up to its broad mandate.

The following sections discuss some of the NMSS's relevant background, highlights progress and successes achieved by NOAA since the last reauthorization, identifies outstanding issues and challenges still facing the NMSS, and details some specific recommendations for your consideration during reauthorization.

### **Context Prior to the 2000 NMSA Reauthorization**

The NMSA was last reauthorized in 2000. The seven years since comprise the NMSA's longest period without being reauthorized, since its first reauthorization in 1980. From 1980-2000, the NMSA was reauthorized on schedule every four years. The 1988 Reauthorization included language that eventually led to the designation of five NMSs (Stellwagen Bank, the Florida Keys, Flower Garden Banks, Cordell Bank, and Monterey Bay). The Florida Keys NMS was created by Congress through the Florida Keys NMS and Protection Act in 1990. Most of the existing NMSs were designated and nearly all of the areas included in the NMSS were designated during a brief period at the end of the Carter Administration and during the years following the 1988 Reauthorization. The site-specific language included in 1988 resulted from Congressional frustration with the lack of progress on new site development via the administrative process from 1981-1988.

In 1990, NOAA recognized a need to review and evaluate the National Marine Sanctuaries Program (System) (NMSP[S]) in light of its then increasing popularity and

rapid growth. NOAA convened an external NMSP review team composed of diverse stakeholders for this purpose. The team produced a report entitled “National Marine Sanctuaries: Challenge and Opportunity”, which was later jointly published by NOAA and Ocean Conservancy (then Center for Marine Conservation). The report contained a number of key recommendations which still ring true, including the following vision: “By the year 2000, the NMSP(S) will manage a comprehensive and integrated system of the nation’s most significant marine areas. This management will be based on ecologically sound, well-researched principles of resource protection and sustainable use and will focus as well on improving public understanding of the nation’s marine heritage and in extending sound marine resource principles to areas beyond sanctuary boundaries.” This vision was not achieved by 2000 and remains unfulfilled now, but progress has and is being made toward it.

Other key recommendations from the Challenges and Opportunities Report worthy of mention here include:

- The Administration should request and the Congress should provide, a budget that is adequate to accomplish the purposes of the individual NMSs, establish new NMSs, and administer the NMSS.
- A high priority should be given to developing the existing Florida Keys and California NMSs as centerpieces of a renewed sanctuary effort.
- Improve communication, outreach, and cooperation with the public, other agencies, groups, and institutions who share a stake in the success of the NMSS.
- NOAA should identify and endorse a clear vision of what the program should become, consistent with its statutory mandate, and should articulate a clear mission that identifies the steps necessary to achieve the vision
- Adequate resources must continue to be available to the sanctuary designation process. Rather than divert these resources, new funding and personnel resources are needed to effectively manage the sanctuaries already in the system.
- The NMSS should be elevated to Office level within NOAA and given higher visibility within the agency, with other agencies, and with the public.
- Priority should also be given to new NMSs that will enhance biogeographic representation and fill gaps in the existing system.
- The NMSS must develop effective, cooperative, and supportive working relationships with other institutions and organizations with related interests.
- At a minimum, each of the biogeographical provinces in U.S. waters should be represented in the NMSS, with one in each of these being sufficiently large to offer reasonable assurance that these regions will be adequately represented.
- In addition, sanctuaries should be established to protect rare, critical, unique, outstanding or otherwise special resources, and additional analysis of how much representation is required by the system should be conducted.
- Regular, independent review should be a continuing element of the NMSS.
- NOAA should explore the possibility of a national nonprofit organization that is in a position to advise and encourage the NMSS.
- NOAA should devise and adopt an appropriate zoning system for NMSs as a priority matter, beginning with new, large sanctuaries in the designation process.

- NOAA should develop clear and fully-integrated research and education agendas for the NMSS.

Some of these recommendations were partially or fully incorporated into the 1992-2000 reauthorizations, some were implemented administratively, and others remain worthy of consideration during this reauthorization.

### **The 2000 NMSA Reauthorization and Subsequent Progress**

The stage was set for the 2000 Reauthorization by additional growth in the size, number, and complexity of NMSs; limited increases in funding for sanctuaries; and changes in Congress during the 1990s. The emphasis during this reauthorization was on improving management of existing sites, increasing funding levels, and reviewing and updating existing management plans. There was recognition that it made some sense to focus on improving the performance of existing sanctuaries and getting them the resources to do what they needed following the prior period of growth. One unfortunate result of this approach was the inclusion of a moratorium on new sanctuary development in the NMSA that now unduly restricts new site development. This limiting language should be removed.

Most of the changes made during the 2000 Reauthorization were minor. Some of the more important ones are summarized below:

- Establishes the NMSS, as opposed to the NMS Program to reflect the idea that the collection of NMSs is supposed to function synergistically as more than just the sum of its parts.
- Requires that if a Federal agency takes an action other than one recommended by the Secretary and which results in damage to sanctuary resources, the agency must prevent further damage and restore or replace the resources in a manner approved by the Secretary.
- Prohibits the Secretary from publishing any new sanctuary designation without first making findings regarding impacts to the NMSS and future funding.
- Authorizes the President to designate a Northwestern Hawaiian Islands (NWHI) coral reef or coral reef ecosystem as a coral reef reserve, to be managed by the Secretary with some limitations and restrictions.
- Requires the Secretary to conduct, support, and coordinate research, monitoring, and education programs. Authorizes the Secretary to promote certain research and to develop interpretive facilities near any national marine sanctuary.
- Requires the Secretary to provide appropriate public notice before identifying any category of activity subject to a special use permit within a NMS and requires permit fees to represent the fair market value of the sanctuary resource use.
- Authorizes appropriations to carry out the Act and for construction projects at sanctuaries.
- Authorizes the Secretary to enter into an agreement with a nonprofit organization to solicit persons to be official sponsors of the NMSS or of individual sanctuaries.
- Directs the Secretary to establish and administer through the National Ocean Service the Dr. Nancy Foster National Scholarship Program.

The prohibition on new sanctuary designation without first issuing a finding is onerous and has adversely affected development of new sanctuaries. The NWHI language was in response to action taken by then President Clinton to protect the NWHI via Executive Order and was intended to limit some of his options and result in a NMS, as discussed below.

Increased authorizations for operations and for a new construction budget line led to considerably increased NMS funding through FY2004. The reauthorization also resulted in significantly improved research, monitoring, and education programs and, for the first time, enabled development of interpretive, outreach, and other facilities for the NMSS (see also below). A dip in recent funding has resulted in significant shortfalls within the NMSS, badly impacting existing programs and reversing prior gains.

The final two points listed above have led to the effective development of the National Marine Sanctuary Foundation and several local entities as partners and supporters of the NMSS and to the creation of a successful Scholarship Program that benefits students and the NMSS.

The big success stories for the NMSS since the 2000 Reauthorization revolve around the development of marine reserve networks and improved management plans in the Florida Keys NMS as well as the Channel Islands and other California NMSs, and the creation of the large and highly-protected NWHI National Monument. These outstanding accomplishments are beginning to show the true potential and promise of the NMSS to deliver on its mandate and provide real protection for its resources. Each has a unique story, but they share some common elements. All three resulted from strong and well-developed public/community support; strong public education, outreach, and involvement processes; good science; a commitment to protect the resources; strong state partners, and prioritization of the site and its process for resources. Worth noting and not coincidental is that each of these success stories also had an external legislative or executive impetus, in addition to the NMSA and NMSS, that helped drive its success. Nevertheless the NMSA and NMSA were still critical to making them happen.

**Florida Keys NMS (FKNMS) and Tortugas Ecological Reserve:** The Florida Keys NMS and Protection Act, enacted in 1990, was the external legislative driver that created the FKNMS and eventually led to the successful creation of the NMSS's first "no-take" or highly-protected zones, including the landmark Tortugas Ecological Reserve. Although this Act built on the NMSA and retained much of its process and framework, it featured additional, stronger language that (1) more clearly prioritized protecting and preserving the "living and other resources of the Florida Keys marine environment" as the Sanctuary's primary purpose and policy; (2) required consideration of temporal and geographical zoning, to ensure protection of sanctuary resources; and (3) mandated that the Administrator of the Environmental Protection Agency and the Governor of the State of Florida, in consultation with the Secretary of Commerce, "shall develop a comprehensive water quality protection program for the Sanctuary." These features were critical to the Sanctuary's successful development of a more comprehensive and

protective management plan, its initial network of “no-take” areas, and its larger Tortugas Ecological Reserve.

### **California National Marine Sanctuaries**

Channel Islands: The experience of the Channel Islands National Marine Sanctuary (CINMS) immediately prior to and following the 2000 NMSA reauthorization serves as an informative case study of the Sanctuary Program’s existing capability to lead and coordinate resource protection programs, and the limitations on such efforts under the current language of the NMSA. By late 1998, widely observed resource declines within the Channel Islands Sanctuary had prompted community-based petitions for the establishment of marine reserves. Lacking the resources necessary to respond to these requests, the California Fish and Game Commission invited the Channel Islands Sanctuary to partner with the State in developing Maps within the Channel Islands region. Thus, despite the Sanctuary’s resource protection mandate, the State of California’s request was still necessary to spur Sanctuary action on marine reserves.

As co-chair of the Channel Islands marine reserves process, the CINMS helped create a model for scientifically robust, collaborative, inclusive, and balanced approaches to difficult management challenges. The CI marine reserves process resulted in creation of eleven new marine reserves protecting approximately 20 percent of the CINMS. Following the approval of phase one (state waters) of the marine reserve network, the Channel Island Sanctuary has continued to play a key role by coordinating the development and implementation of a research and monitoring plan and assisting with education and enforcement. During the subsequent, federal phase of the marine reserve decision making process revealed a key shortcoming of the Sanctuary Program’s role in resource protection. Although the NMSA provides specific guidance for management actions by sanctuaries that affect fishing, implementation of this authority to establish the federal waters portions of the CI marine reserves was hampered and delayed by institutional problems and lack of effective integration between the Pacific Fisheries Management Council and the Sanctuary Program. Ultimately, the Channel Islands federal reserve network was implemented by an awkward side-by-side application of provisions from both the Magnuson-Stevens Act and the NMSA. The integration and collaboration sought by the NMSA in section 304(a)5 remains an important unrealized vision.

California Central Coast Sanctuaries Joint Management Plan Review Process: In 2001, California’s central coast sanctuaries (Monterey Bay, Gulf of the Farallones, and Cordell Bank) began a Joint Management Plan Review (JMPR) process with the ambitious goal of completely updating the management of these three contiguous sanctuaries whose management plans were between ten and twenty years old. The joint management plan process has proved largely successful at generating public interest in sanctuary management and soliciting community input on sanctuary priorities. Between 2001 and 2003, hundreds of California residents participated in public hearings and submitted more than 13,000 public comments – most of them urging the Sanctuary Program to increase protection for sanctuary resources. This community input resulted in several new issue-

related “action plans” and a limited number of proposed new regulations. In most cases, the sanctuaries’ new action plans and regulations had the unanimous support of their advisory councils. Unfortunately, lengthy delays in finalizing the new management plans and regulations have significantly undermined public interest and confidence in the Sanctuary Program, and recent severe budget cuts are likely to prevent progress on many fronts.

After receiving strong public demand for MPAs during the JMPR process, the Sanctuary’s Advisory Council identified MPAs as a top priority and the Monterey Bay National Marine Sanctuary (MBNMS) convened a multi-stakeholder working group on this issue in 2002. In 2004, the MBNMS deferred consideration of MPAs in state waters to California’s efforts under the state Marine Life Protection Act; the MBNMS focused its own MPA planning effort exclusively on federal waters. The MBNMS played a significant role in the successful Marine Life Protection Act Initiative that resulted in the creation of 29 new marine protected areas along the central coast of California in September of this year. Many of the new MPAs are located within the boundaries of the MBNMS and the Sanctuary Program provided resources, contributed to development of socio-economic data collection, and served on the MLPA stakeholder group. Success of the California’s new MPAs will depend largely on the state’s ability to maintain effective partnerships that address management, monitoring, and enforcement; the Sanctuary Program can and should continue to play a significant role.

By contrast to the pressure created by California’s Marine Life Protection Act in state waters, the MBNMS has lacked a clear legislative driver or a specific timeline for progress in federal waters. Faced with opposition by fishing interests, the MBNMS has failed to make significant progress on developing MPAs in federal waters over the past five years. The MBNMS’s new Superintendent recently announced his intention to decide in early 2008 whether the MBNMS is going to continue to pursue MPAs or to drop the issue and move on with other priorities. The ongoing implementation of the Marine Life Protection Act provides a unique opportunity for the National Marine Sanctuary Program to partner with the state in order to ensure a comprehensive network of marine protected areas that extends from the nearshore waters governed by the state into deeper water habitats under the authority of the Sanctuary Program. Adoption of MPAs in federal waters in all of the California sanctuaries is critical to the ability to manage sanctuary resources effectively and should be a top priority in the years to come.

#### **Northwestern Hawaiian Islands - Papahānaumokuākea National Monument:**

The Papahānaumokuākea Marine National Monument (MNM) was created by Presidential Proclamation in June 2006 under the Antiquities Act. It is the single largest conservation area under the U.S. flag, and the largest marine conservation area in the world. It encompasses 137,797 square miles of the Pacific Ocean (105,564 square nautical miles) - an area larger than all the country’s national parks combined. Although not a NMS, the marine area of the monument is managed through the NMSS. The process leading to the creation of the Monument was initiated as a result of three earlier Executive Orders issued under President Clinton and language included in the 2000

NMSA Reauthorization that created a NWHI Coral Reserve and initiated a process to develop a NWHI NMS. President Bush's June 15, 2006 announcement event capped several years of efforts by the Sanctuary Program to develop a NMS in the Northwestern Hawaiian Islands. The development of the NWHI Coral Reef Reserve and NMS was strongly science based, broadly participatory, and deliberative. The public and stakeholders were consulted and numerous opportunities were provided for their input. The proclamation document was substantially based on the draft management plan that the NMSS was developing and was nearly ready for release for public comment.

The Monument protects the most remote large coral reef archipelago in the world. The NWHI is among the most pristine such areas in the world, and is home to a large number of endemic species, millions of seabirds and sea turtles, the endangered Hawaiian monk seal, and spectacular community of large marine predators. The Monument provides a much higher level of protection than any other site within the NMSS and will preserve the archipelago as an example of what coral reefs can be for generations to come. The co-trustees of the Monument, NOAA, DOI and the State of Hawaii, are currently proceeding with the development of the Monument management plan that will be subject to a fully participatory review and comment process. The Papahānaumokuākea NM is a shining example of the potential of what the NMSS can produce and what future remote NMSs could look like. However, the convoluted process to create it required multiple external drivers and the fact that it was ultimately created by Executive Order under the Antiquities Act attest to the difficulties of creating a large, highly protected NMS under the current NMSA.

### **Priority Reauthorization Recommendations**

This Congress has an unprecedented opportunity to build on these successes, release the potential of the NMSS, and ensure that the system finally lives up to its broad mandate. Ocean Conservancy encourages the Committee to make this crucial reauthorization a priority, and we look forward to working with you to complete it during the 110th Congress. We believe that a strong reauthorization of the NMSA focused on targeted and critical changes, rather than a massive overhaul, would enhance and ensure the success of the NMSS and would provide critically important, comprehensive ecosystem-based protection for some of our most valuable marine ecosystems. We respectfully recommend the following key areas and changes as priorities for your consideration during this reauthorization.

- Provide a vision for the program to achieve within a defined timeframe.
- Clarify that comprehensive, ecosystem-based, resource protection is the over-riding priority and goal for the program.
- Include a mission statement that clearly and simply states that the purpose of the NMSS is to protect, restore, and enhance the living and nonliving resources within and beyond its boundaries.
- Elevate the NMSS to Office level or higher within NOAA and give it higher stature and visibility within the agency, with other agencies, and with the public.



- Require consideration of and provide explicit authority for geographic and temporal zoning, including the use of marine reserves and other highly-protected areas, to achieve resource protection, during development and subsequent review and revision of sanctuary management plans.
- Remove the existing moratorium on new site designations.
- Expedite the process for improving sanctuary management plans and amending regulations.
- Detail improved pathways for identifying and designating future sanctuaries.
- Establish a policy goal that each of the biogeographical provinces in U.S. waters should be represented in the NMSS, with one or more sites of sufficient scope to assure adequate representation; the policy goal should require inclusion of sanctuaries that protect rare, critical, unique, outstanding, or otherwise special resources.
- Create a mechanism to provide immediate protection to endangered ecosystems.
- Improve the mechanism for developing sanctuary specific fishing regulations or determining that such regulations aren't needed in a timely manner.
- Provide a budget that is adequate to accomplish the purposes of the individual NMSs, establish new NMSs, provide and maintain facilities, and administer the NMSS. A budget that increases to \$100 million over the timeframe of this reauthorization is a reasonable estimate of what is needed.

Ocean Conservancy welcomes the opportunity to work with this committee toward a successful reauthorization, and we will continue to develop these and related ideas as the reauthorization process moves forward.

Thank you again for the opportunity to present the views of the Ocean Conservancy.