

History of the National Marine Sanctuaries Act

In 1966, Congress passed the Marine Resources and Engineering Act, which resulted to the formation of the Commission on Marine Sciences, Engineering, and Resources (COMSER) chaired by Julius Stratton, former president of the Massachusetts Institute of Technology. COMSER, which ultimately became known as the Stratton Commission, was impaneled to review the status of most areas of American ocean policy, and investigate the possibilities of a coordinated governmental effort regarding coastal resource conservation. The Commission issued its report concurrently with the incoming of the Nixon administration in January 1969.

Several important themes emerged from the Stratton report. First, it called for a centralization of the federal government's ocean effort if the full benefits of the nation's marine and coastal resources were to be realized. Concomitantly, the report called for the creation of a civilian ocean and atmosphere agency to undertake the full range of actions needed to realize the effective use of the sea. Second, the report stated the urgent need for a concerted effort to begin planning and managing the nation's coastal zones. It advocated more research and recommended a federal-state program in coastal zone management. Finally, the report highlighted the need for a much-expanded program in ocean science, technology, and engineering, at both the national and global levels.

The Stratton Commission's report and other studies spurred Congress to introduce a series of bills in 1970-'72 which culminated in the creation of the National Oceanic and Atmospheric Administration (NOAA) and legislation which contained many fundamental coastal and nearshore ocean protective measures. Among those enactments were the Coastal Zone Management Act, the Marine Mammal Protection Act, the Magnuson Fishery Conservation and Management Act, the Clean Water Act, the Outer Continental Shelf Lands Act Amendments, and the Marine Protection, Research, and Sanctuaries Act (MPRSA).

1972—Enactment of the MPRSA

In 1972, exactly one hundred years after the birth of the National Park System, the U.S. Congress enacted, and President Nixon signed, the Marine Protection, Research, and Sanctuaries Act. Title III of that act created what is known as the National Marine Sanctuaries Program, a framework for the protection of marine areas of special national significance.

As originally enacted, Title III permitted the Secretary of Commerce to:
“...designate as marine sanctuaries those areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf...which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values.”

Title III also provided that:

- The designation by the Secretary was effective, as far as a State’s territorial waters, unless the Governor of the State certified that it was unacceptable;
 - The Secretary may issue necessary and reasonable regulations to control any activity permitted within the marine sanctuary; and
- 1 Whoever violates any regulation shall be liable for a civil penalty of not more than \$50,000 for each such violation.

1980—The First Substantive Amendment to Title III

The first real amendments to Title III (other than appropriations acts amendments) occurred in 1980. Changes made at that time included the following:

- 1 Governors of any territory or possession were given the same rights as State Governors in the designation process;
- 1 Provided that Congress, by adopting a concurrent resolution in both Houses, could disapprove a designation or any of its terms;
- 1 Required that the terms of designation include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological or esthetic value; and the types of activities that would be subject to regulation by the Secretary in order to protect those characteristics; and
- 1 Provided that the Secretary and the Secretary of the department in which the Coast Guard is operating (currently Transportation) shall conduct such enforcement activities as necessary to carry out the purposes of Title III.

1984—Congressional clarification

The 1984 amendments were designed (in the words of the Senate report accompanying the enacted bill) to “reduce the confusion surrounding this program by providing explicit guidance to the Administration as to Congress’ intent regarding the National Marine Sanctuary program.” Toward that end the amendments:

- 1 Set out factors and consultations required in making sanctuary designation determinations and findings;
- 1 Required a Resource Assessment Report documenting present and potential uses of the area in making such determinations and findings;
- 1 Provided, with great particularity, the procedures for sanctuary designation and implementation;

- 1 Required that the Secretary conduct research and educational programs necessary to carry out the purposes and policies of Title III; and
- 1 Provided that the Secretary is to utilize, by agreement, whenever appropriate the personnel, services, and facilities of other Federal agencies, on a reimbursable basis, in carrying out his responsibilities under the title.

1988—Significant Changes

The 1988 amendments resulted in substantive changes to Title III, adding several new sections and completely revamping a number of existing sections. The most noteworthy changes include the following:

- 1 A new section authorized the program to establish a special use permit program for commercial-type operations—such as glass bottom boats and diving trips—in sanctuaries. The fee authorized for the permit would be set to recover administrative costs, the “fair market value” of the use of the resource, and a reasonable return to the government.
- 1 Another new section provided that any vessel or person causing injury or destruction to the resources of a sanctuary would be liable for response and clean-up costs and damages for any sanctuary resources injured or destroyed.
- 1 A new section enabled the program to retain response costs and damages recovered, to be used for restoration of the sanctuary and for reimbursement of clean-up costs, and also established priorities for the use of the recovered funds.
- 1 Title III did not explicitly contain many of the specific enforcement authorities of other statutes enforced by NOAA, such as the Magnuson Fishery Conservation and Management Act and the Marine Mammal Protection Act. Thus, a section was amended to provide more uniform enforcement authority under statutes protecting living marine resources.

1992—Major Overhaul

The year of the 20th anniversary of Title III saw what have been the most substantial changes to date—not the least of which was a name change. One amendment provided that “This Title may be cited as ‘The National Marine Sanctuaries Act.’” Thus, hereafter in this document Title III will be referred to as the NMSA. Other significant changes included:

- 1 The procedures for designation and implementation were amended in 1992. The most important changes included: eliminating the section regarding the authority of Congress through joint resolution to disapprove of any designation; requiring interagency consultations on federal actions likely to harm sanctuary resources (known now as 304(d) consultations); and requiring that the Secretary review sanctuary management plans at least every five years.
- 1 A new subsection was added to promote better international cooperation to implement the NMSA, consistent with international agreements for the protection and management of marine areas.
- 1 New language on prohibited activities was adopted. The new section explicitly made it unlawful to: injure or destroy sanctuary resources that are managed under law or regulations for that sanctuary; violate any provision of the NMSA or regulations issued pursuant to it; possess any sanctuary resources taken illegally; or interfere with the enforcement of the NMSA.
- 1 The maximum civil penalty for violation increased to \$100,000. A penalty assessed was also deemed to constitute a maritime lien on any vessel involved. Forfeiture claims were deemed not subject to set-off against resource damage claims or civil penalties.
- 1 An '84 amendment had directed the Secretary to promote and coordinate the use of national marine sanctuaries for research. A new amendment included monitoring and education as priorities within sanctuaries.
- 1 As amended, one section gave the Secretary authority to provide financial assistance for research, monitoring, program evaluation, and education. It also clarified that donations to the program are gifts to the United States, and authorized the Secretary to solicit donations for the program.
- 1 Authority was given to establish citizen advisory councils to assist in the designation and management of marine sanctuaries.

1996—Incremental change

The 1996 changes to the NMSA may best be described as incremental as compared to the more comprehensive overhaul of 1992. For example, significant changes in the 1996 amendments were:

- 1 The authorization of an innovative public-private partnership between the sanctuary program and private enterprise. Facets of that collaboration included:

- The adoption of a symbol for the national marine sanctuary program, or of any individual sanctuary, allowed to be used by an “official sponsor”;
- Allowing the Secretary to designate “official sponsors” of the sanctuary program or of an individual sanctuary;
- Permitting the creation, marketing, and selling of products to promote the national marine sanctuary program;
- Authorizing the Secretary to enter into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary’s behalf.

2000—Latest Revisions

2000 again saw some significant changes to the NMSA. Important changes included:

- 1 The sanctuaries were formally collectively named the “National Marine Sanctuary System.”
- 1 Prior to designating a new sanctuary, the Secretary must publish a finding in the Federal Register that:
 - The addition of a new sanctuary will not have a negative impact on the Sanctuary System as a whole; and
 - Sufficient resources are available to:
 - Effectively implement all sanctuary management plans; and
 - Complete site characterizations and resource inventories for all sanctuaries within 10 years of the finding.
- 1 The section on prohibited activities was amended to clarify that it is illegal to offer for sale, purchase, import, or export, any sanctuary resource.
- 1 Enforcement of the NMSA was strengthened; criminal penalties were instituted for resisting or interfering with any enforcement of the NMSA; also, knowingly submitting false information to the Secretary or any officer authorized to enforce the Act was made a criminal offense.
- 1 Due to the remote location of many of the sanctuaries, the Secretary was authorized to develop accessible interpretive facilities.