

**WRITTEN STATEMENT OF  
JOHN H. DUNNIGAN  
ASSISTANT ADMINISTRATOR  
NATIONAL OCEAN SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON  
REAUTHORIZATION OF THE *NATIONAL MARINE SANCTUARIES ACT***

**BEFORE THE  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS  
U.S. HOUSE OF REPRESENTATIVES**

**June 18, 2008**

**INTRODUCTION**

Good morning, Madam Chair and members of the Subcommittee. I am John H. Dunnigan, Assistant Administrator for Ocean Services and Coastal Zone Management for the National Oceanic and Atmospheric Administration (NOAA). Thank you for the opportunity to testify on the reauthorization of the *National Marine Sanctuaries Act*.

Thirty-six years ago, Congress passed the *Marine Protection, Research, and Sanctuaries Act of 1972* (P.L. 92-532). Title III of that law, later also named the *National Marine Sanctuaries Act* (the *NMSA*), authorized the Secretary of Commerce to designate areas of the marine environment, including the Great Lakes, as national marine sanctuaries.

The *NMSA* is one of the strongest pieces of federal legislation for protecting both natural and cultural resources in the oceans and Great Lakes. The *NMSA* is unique among the suite of federal laws aimed at protecting or managing marine resources in that its primary objective is to set aside marine areas of special national significance for their permanent protection and to manage them as ecosystems to maintain their natural biodiversity and historical and cultural heritage.

My testimony today will focus on the benefits of the *NMSA* to marine resource conservation and management, our recent accomplishments, and the remaining challenges faced by NOAA in fully implementing the *NMSA*.

**BENEFITS TO MARINE RESOURCE CONSERVATION**

As a leader in marine conservation, the National Oceanic and Atmospheric Administration (NOAA)-- through its Office of National Marine Sanctuaries (ONMS)-- is meeting the evolving challenges facing our nation's ocean and Great Lakes resources

through better education, more research, and improved protection. We are making a difference in ocean conservation.

When Congress reauthorized the *NMSA* in November 2000, it strengthened the protection and management of these areas by providing that these individual national marine sanctuaries be managed as a single system of marine protected areas. Building on the concept of similar protected area systems such as the National Park System and National Wildlife Refuge System, the National Marine Sanctuary System (the System) was established so that the whole would be greater than the sum of its parts.

Today, the System provides protection and management to almost 150,000 square miles of ocean and coastal habitats. The System protects some of our nation's most significant natural and cultural marine resources from the coral reefs and mangrove swamps of the Florida Keys, to the deep-sea canyons of Monterey Bay, California, to the historically significant shipwrecks of Lake Huron. Its wide geographic scope provides an ideal platform to test new and emerging conservation practices that can then be applied in other coastal and marine areas throughout the nation. With these new techniques and an underlying commitment to adaptive management principles, NOAA is continually on the cutting edge of resource management.

#### *Including People in Ecosystem Based Management*

NOAA has been a leader in applying ecosystem approaches to marine resource management through its implementation of the *NMSA*. NOAA considers humans and their interactions in national marine sanctuaries to be an essential component of ecosystem based management. The *NMSA* envisions sanctuaries where human uses occur, compatible with the overarching goal of resource protection. More important, NOAA involves people in its decision making through the 14 advisory councils that provide a critical link to communities adjacent to national marine sanctuaries and the Papahānaumokuākea Marine National Monument. The Sanctuary Advisory Councils consist of representatives from the local fishing community, local business, academic and environmental sectors, and local government.

The *NMSA* has one of the most inclusive participatory processes in federal government. "The Sanctuary Process" has become a descriptive term for a thorough public process. As a federal trustee of the resources of our nation's specially protected marine areas, NOAA depends on the valuable input of our constituents and sanctuary stakeholders to help guide our resource management actions and priorities. Whenever we initiate a management plan review, we go to great lengths to involve the public in the process to develop action plans or new regulations to address issues the public itself has raised.

NOAA also engages more than 400 partners across the country to maximize its ocean conservation goals. The efforts of aquaria, local businesses, university researchers, government agencies, boaters, educators, volunteers and countless others allow NOAA to leverage its investments for greater returns.

NOAA reaches millions of Americans across the country with its educational messages on oceans. Through distance learning, live programming, curriculum programs and classroom workshops, the NOAA is reaching people of all ages.

#### *Creation and Implementation of a Maritime Heritage Program*

NOAA now has a comprehensive Maritime Heritage Program to enhance NOAA's stewardship responsibilities of submerged historic and cultural resources within the 14-site System, and to meet the goals of President Bush's Preserve America Initiative. This is among the primary federal programs addressing this important area of the American experience. The System was the first program to bring together the richness of our nation's maritime past and conservation efforts.

Our Maritime Heritage Program leverages NOAA's extensive experience in the investigation, management and protection of shipwrecks, paleo-Indian sites and other underwater cultural resources. The program completed a Maritime Archaeology Center in FY 2004. Located in Newport News, Virginia, the center provides technical assistance to individual sanctuary superintendents and supports federal, state and local efforts to preserve America's maritime heritage for future generations to learn from and enjoy.

#### *Making Science a Priority*

NOAA has partnered with many research institutions across the country and spends about \$9 million per year on science and research in our sanctuaries. This research translates directly into meaningful sanctuary management applications. Some examples include the recent work at the Gerry E. Studds Stellwagen Bank National Marine Sanctuary where NOAA is using science to help protect whales in the Olympic Coast National Marine Sanctuary where new deep sea coral is being discovered, and in the Channel Islands National Marine Sanctuary where new comprehensive biogeographic assessments have been conducted.

Based on NOAA science and U.S. Coast Guard assessments, the U.S. developed and submitted a proposal to the International Maritime Organization (IMO) to shift ship traffic lanes that pass through the Stellwagen Bank National Marine Sanctuary and service Boston to dramatically reduce ship strikes of endangered right whales. The IMO approved the proposal, and the shipping lanes have been rotated slightly to the northeast and narrowed to avoid waters where there are high concentrations of whales. The lane shift also improves safety by moving large ship traffic further away from areas frequently transited by smaller fishing boats and by reducing chances of damage to large ships from collisions with whales or other ships attempting to avoid whales. The shift is expected to reduce the risk of ship strikes to right whales by 58 percent and to other large whales by 81 percent in this geographic area.

In June 2006, NOAA researchers from the Olympic Coast National Marine Sanctuary found evidence of deepwater sponge and coral communities in waters once thought too cold for them to thrive. Scientists found colonies of the rare stony coral *Lophelia*,

numerous other coral species and a rich abundance of invertebrates and fishes, including commercially important rockfish (*Sebastes*). Some sites surveyed showed signs of impact from seafloor disturbances. Findings confirmed that these coral communities are a significant portion of the sanctuary ecosystem.

As pointed out in the recent National Science and Technology Council report *Charting the Course for Ocean Science in the United States for the Next Decade: A Ocean Research Priorities Plan and Implementation Strategy*, developing effective ecosystem-based management strategies requires knowing what lives in sanctuaries and their association to specific types of habitat. NOAA scientists are answering some of these questions by conducting comprehensive biogeographic assessments about the distribution of marine life and physical oceanography within national marine sanctuaries. Information gained from these in-depth studies supports NOAA ecosystem approaches to management as well as regional marine science and education efforts. The most recent study was completed in the Channel Islands National Marine Sanctuary and represents one of the most comprehensive efforts undertaken in the region to understand how marine life and habitats are associated with one another.

#### *Promoting Regional Collaboration and Coordination*

Recognizing that the understanding and protection of our oceans and coasts is a complex and resource intensive endeavor, NOAA has taken great strides toward maximizing the efficiency of marine resource management by implementing or joining efforts at regional ocean governance.

NOAA has recently established regional offices within the ONMS representing four geographic areas: the Pacific Islands, the West Coast, the Northeast/Great Lakes, and the Southeast/Gulf of Mexico. This structure promotes consistent decision-making and widespread program integration across the System, while allowing us to efficiently and consistently coordinate program activities with other organizations that already operate at a regional level (such as NOAA's National Marine Fisheries Service, the National Park Service, the State of California, and the multi-university Partnership for Interdisciplinary Studies of Coastal Oceans).

These regional offices are also promoting more robust efforts at ecosystem-based management through dedicated collaboration on initiatives focusing on large swaths of the ocean connected by a common environmental link. In the West, such initiatives include the West Coast Governors' Agreement on Ocean Health and the West Coast Pilot, which is a regional marine protected area planning project led by NOAA's Marine Protected Areas Center.

### **SIGNIFICANT ACHIEVEMENTS IN MARINE RESOURCE PROTECTION**

Since the last reauthorization of the *NMSA*, NOAA has helped to establish the world's largest fully protected marine area, set aside marine zones in Channel Island National Marine Sanctuary, created the Tortugas Ecological Reserve in Florida Keys National

Marine Sanctuary, and rescued national artifacts from ruin in the Monitor National Marine Sanctuary.

*Establishing the World's Largest Fully Protected Marine Area*

On June 15, 2006 the President established the Papahānaumokuākea Marine National Monument (Monument) in the Northwestern Hawaiian Islands under the authority of the Antiquities Act of 1906 (16 U.S.C. 431). The Monument encompasses approximately 140,000 square nautical miles, it is the largest single area dedicated to conservation in the history of our country and the largest fully protected marine area in the world. It is also now one of only a dozen internationally-recognized Particularly Sensitive Sea Areas. The region holds the largest, healthiest, and most untouched coral-reef system in the United States and is home to more than 7,000 marine species, a quarter of which are found nowhere else on Earth. The Northwestern Hawaiian Islands are also the primary home for the nearly 1,400 surviving Hawaiian monk seals, virtually the entire population of this critically endangered species. They are also the breeding grounds for approximately 90 percent of the threatened Hawaiian green sea turtle population as well as five critically endangered bird species and six endangered plant species. This area is also of great cultural importance to Native Hawaiians with significant cultural sites found on the islands of Nihoa and Mokumanamana.

To provide the most effective management of the area, Governor Linda Lingle, Secretary of Commerce Carlos M. Gutierrez, and Secretary of the Interior Dirk Kempthorne signed a Memorandum of Agreement (MOA) on December 8, 2006, which provided for coordinated administration of all the federal and state lands and waters within the boundaries of the Monument. The MOA provided that management of the Monument is the responsibility of the three parties acting as co-trustees. The co-trustees established the Papahānaumokuākea Interagency Coordinating Committee (ICC) to assist in implementation of Monument management. The ICC includes representatives from the Co-Trustees and other agencies including the U.S. Environmental Protection Agency, U.S. Coast Guard 14<sup>th</sup> District Prevention and Response, U.S. Geological Survey, and the U.S. Department of Defense. Other federal and state agency partners may participate as well.

This partnership approach to management is innovative in that it leverages the diverse experience and expertise of each partner in achieving the highest level of marine resource protection and management ever attempted anywhere in the world. In April 2008 the co-trustees released Papahānaumokuākea Marine National Monument Draft Management Plan for public review and comment (through July 8). Once completed, the documents will guide the future management of this unique and fragile part of Hawai'i during the next 15 years.

Designation of the Monument is a significant achievement that would not have been possible without the work NOAA had conducted while we worked towards designating the area as a national marine sanctuary and the work the Fish and Wildlife Service conducted through management of the National Wildlife Refuges in the area since 1909.

Between 2001 — when President Clinton designated the area as a coral reef ecosystem reserve — and 2006, NOAA conducted more than 100 public meetings, led numerous scientific and ecological characterizations of the area, completed a multitude of interagency consultations, and prepared an innovative management plan for the area. By 2006, President Bush determined that sufficient process had occurred regarding protection of the area and, using NOAA's work as a foundation, provided immediate protection to this internationally significant area.

### *Protecting the Channel Islands National Marine Sanctuary*

Last year, NOAA completed a network of no-take and limited-take marine zones in the Channel Islands National Marine Sanctuary, capping off an eight-year public process that NOAA and the State of California initiated in 1999. These new marine zones together with the State's marine zones created in 2003 now comprise the largest marine zoning network of reserves in the continental United States. The creation and ongoing management of the network has been a joint effort, bringing together NOAA, the State of California, the National Park Service's Channel Islands National Park, and the Pacific Fishery Management Council. Early studies show more and larger fish are in and near these new reserves.

The network also reflects how NOAA can use the *NMSA* in concert with other marine resource laws it implements, particularly the *Magnuson-Stevens Fishery Conservation and Management Act*, to achieve meaningful marine conservation.

### *Creating the Tortugas Ecological Reserve in Florida Keys National Marine Sanctuary*

After years of planning, NOAA created the Tortugas Ecological Reserve- a no-take area- in 2001 to protect the diverse marine life and lush coral reefs of the Florida Keys National Marine Sanctuary.

Encompassing 151 square nautical miles in two sections, the Tortugas reserve is the largest of 24 areas set aside for special protection throughout the Florida Keys. Tortugas North protects the extensively deep coral reefs of Tortugas Bank and Sherwood Forest. Tortugas South protects Riley's Hump, a low profile reef that is a spawning site for grouper, snapper, and valuable deepwater habitat found nowhere else in the sanctuary that supports commercially important golden crab, tilefish, and snowy grouper. The 46 square-mile Research Natural Area at Dry Tortugas National Park provides an important ecological link by protecting shallow coral reef and seagrass habitats utilized by reef species in the reserve.

Five years after its creation, researchers found confirmation that the reserve is fulfilling its goal of protecting the region's marine life. Three studies examining the Tortugas Ecological Reserve, documented increasing numbers and sizes of commercially and recreationally important species of fish and other marine life.

### *Rescuing National Artifacts from Ruin in the Monitor National Marine Sanctuary*

At 6:00AM on August 5, 2002, NOAA and the U.S. Navy succeeded in raising the world's first armored revolving gun turret from the wreck of the famous Civil War ironclad USS *Monitor*, which rests below 240 feet of water 16 miles southeast of Cape Hatteras, NC, in the "Graveyard of the Atlantic." Also recovered were the vessel's two large Dahlgren cannons.

The retrieval of the turret and cannons marks the end of a multi-year effort by NOAA, the Navy, and The Mariners' Museum to preserve key components of the revolutionary ship before sea water corrodes the vessel beyond recognition.

The turret, with the cannons inside, was hoisted from the sea floor by a 500-ton crane aboard the Derrick Barge Wotan. The turret was then secured on the barge's deck for transport to The Mariners' Museum in Newport News, VA, where conservators began the 10-year process to preserve it. Prior to the lift, NOAA and Navy teams worked for six weeks to remove a 30-ton section of the *Monitor*'s hull plating and armor belt to uncover the turret and its contents, including the ship's two 11-inch smoothbore Dahlgren cannons.

NOAA and Navy divers recovered more than 200 artifacts during the 41-day expedition, including a glass button, hydrometers, working thermometers, an intact lantern chimney and two stanchions. All were conveyed to The Mariners' Museum for conservation and exhibit.

## **PRIORITIES AND CHALLENGES FOR THE FUTURE**

The *NMSA* is one of the nation's most successful marine resource conservation laws and its reauthorization should be a top priority of Congress as it considers environmental legislation. There are, however, several issues that the Administration considers ripe for change within the act.

### *The NMSA's Primary Purpose and Mission Focus*

Although the *NMSA*'s primary purpose is resource protection, the *NMSA* has lacked an overarching mission statement since its passage in 1972. In implementing the *NMSA*, NOAA must piece together current priorities and management goals through references found scattered throughout the *NMSA*. This has, on occasion, led to confusion as to the *NMSA*'s primary mission focus. In clarifying its primary purpose, the *NMSA* could be modified to include a stand-alone purpose and policy on resource protection and a clear concise mission statement for NOAA in implementing that policy.

### *Sanctuary Identification and Designation*

There has been considerable confusion about the processes for evaluating sites for eligibility and designating them as national marine sanctuaries. This confusion has been a significant impediment to NOAA making timely decisions about designating sites and

in conducting management plan reviews for existing national marine sanctuaries. Reauthorization discussions of the *NMSA* could include consideration of new language to streamline and clarify these processes with the goal of allowing NOAA to make more timely and predictable decisions.

Any changes to the existing processes, however, must be made in a way that first and foremost preserves the *NMSA*'s longstanding commitment to transparent public process. Any changes must also maintain the *NMSA*'s important procedural safeguards, such as interagency and intergovernmental consultation requirements.

### *Marine National Monuments*

The *Antiquities Act of 1906* (16 U.S.C. 431-433) gives the President authority to protect natural and cultural objects through designation of a national monument. Although this authority has been largely used to protect terrestrial resources, it has been used to protect special areas of the marine environment as well, including the PMNM, which is the first monument NOAA has responsibility to manage. While this statute provides a basis for strong protection, the *NMSA* provides NOAA a number of well-tested and highly valuable administrative management tools to effectively manage and protect national marine sanctuaries that are not available under the *Antiquities Act*. In particular, the *NMSA* provides for the recovery of damages from parties responsible for injuring sanctuary resources (section 312); it allows for a community-based advisory council to provide input in sanctuary management (section 315); and it allows for NOAA to pursue civil penalties for violations of the *NMSA* and regulations or permits issued under the *NMSA* (section 307).

### *Technical Enhancements to Key Elements of the NMSA*

Several key elements of the *NMSA* lay the basic foundation for management of the System and provide essential statutory authority to ensure its overarching goals and objectives are efficiently met. These include the ability to conduct enforcement (section 307), the authority to issue regulations (section 308), the mandate to conduct scientific research and educational programs (section 309), the flexibility to issue special use permits (section 310), the authority to enter into cooperative agreements (section 311), the authority to collect damages from parties responsible for injuring sanctuary resources (section 312), the authority to establish and convene advisory councils (section 315), and the authority to solicit sponsors and accept other forms of support (section 316). Reauthorization discussions could include careful evaluation of these foundational pieces of the *NMSA* and update them as necessary to ensure they continue to meet NOAA's needs. For example, some considerations could include:

- increasing the maximum civil administrative penalty per day per offense, to provide a greater deterrent;
- providing better clarity on the issuance and enforcement of permits (e.g., clarify that NOAA has the authority to revoke permits it issues under the authority of NMS regulations);



- making the management of advisory councils more efficient by eliminating the 15-member limit on advisory councils for sanctuaries designated after November 4, 1992; and
- allowing NOAA to withhold data and information that, if released, could result in injury to sanctuary resources.

## **CONCLUSION**

In closing, the Administration strongly supports reauthorization of the *NMSA* and looks forward to working with Congress to ensure the *NMSA* remains one of the nation's foremost conservation acts in the years to come.

Thank you again for the opportunity to offer my thoughts on this very important statute. I will be glad to answer any questions.