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

**BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

June 18, 2008

Madam Chairwoman, Ranking Member, and Members of the Subcommittee:

Thank you for inviting us to testify today on the reauthorization of the National Marine Sanctuaries Act. My office recently reviewed the National Marine Sanctuary Program and issued a report in February 2008. Our testimony today is based on this work, which included visits to eight sanctuaries and discussions with stakeholders representing the many and diverse interests affected by this program.

The National Marine Sanctuary Program, operated by NOAA's National Ocean Service, manages 13 marine sanctuaries and one national monument. Together, these protected areas encompass more than 158,000 square miles of ocean and Great Lakes marine habitats. The sanctuaries range in size from a quarter mile in American Samoa's Fagatele Bay to 5,300 square miles in California's Monterey Bay. The Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands, designated by President Bush in 2006, encompasses 138,000 square miles.

These special habitats have conservation, scientific, or historical significance. They include deep-ocean and near-shore coral reefs, whale migration corridors, and deep sea canyons. They offer safe breeding grounds for threatened species and harbor a vast array of underwater archeological sites and cultural resources. The goal of the National Marine Sanctuary Program is to protect and enhance their biodiversity and ecological integrity. A map and listing of existing sanctuaries appears in appendix I.

The sanctuary program was established in 1972 but started slowly, with no designated sites for 3 years, no separate budget for 5 years, and no federal field staff for 10 years. In 1990, the operating budget for the entire program was \$3 million. It steadily increased in the late 1990s and reached nearly \$43 million in 2003, according to NOAA. Over the past 5 years funding has increased (appendix II) to cover growing operational costs and new spending on facilities, ships, and other needed equipment, such as data buoys to monitor water quality. NOAA reported FY 2008 enacted funds of \$60.5 million. The program employs nearly 400 government and contract staff and maintains a fleet of 46 vessels.

In addition to our report on the sanctuaries program, several other studies have been conducted, including a recent review by the National Academy of Public Administration (NAPA) and a program assessment by the Office of Management and Budget.

My testimony today will focus on three areas:

1. The National Marine Sanctuary Program faces many management challenges but is meeting objectives.
2. As part of reauthorization, Congress should consider
 - providing the Secretary with the flexibility to establish sanctuary management plan time frames,
 - providing the Secretary with the same authority for managing marine monuments as for managing sanctuaries, and
 - establishing a title within the act that specifies protection of maritime heritage resources.
3. NOAA can take several steps to strengthen management of sanctuary enforcement efforts.

THE NATIONAL MARINE SANCTUARY PROGRAM FACES MANY MANAGEMENT CHALLENGES BUT IS MEETING OBJECTIVES

The National Marine Sanctuary Program is effectively protecting marine resources despite the enormous expanse of waters under its management and the distinct conservation threats facing the individual sanctuary sites. Consider that:

- The program manages underwater areas that are far-reaching and geographically diverse, each with its own unique mix of complex marine life and environmental conditions that require unique conservation approaches.
- Within these waters, the sanctuary program must balance the protection and conservation of resources with vital commercial interests—such as fishing and energy production—and must coordinate its activities and efforts with numerous federal agencies, other components within NOAA, and outside stakeholders.
- It must manage proactively by anticipating the unknown impacts of global climate change, ocean fishing, and pollution on each sanctuary and the monument.

Yet recent research confirms that the sanctuary program is improving the health of ecosystems and the wildlife populations that depend on them. For example,

- Certain areas in the Florida Keys sanctuary that forbid all fishing are showing an increase in the size and abundance of some economically important marine species, such as spiny lobsters, grouper, and snapper fish.

- Seabird populations in the Gulf of the Farallones sanctuary off the California coast have rebounded in response to the sanctuary's efforts to decrease human disturbance at breeding and nesting times.
- The Monterey Bay sanctuary has experienced a significant increase in the northern elephant seal population as a result of sanctuary regulations, outreach, education, and strict state protections.

The program is preserving cultural and archaeological resources as well, such as the USS Monitor, the Civil War battleship sunk off the coast of North Carolina, and shipwrecks in Lake Huron's Thunder Bay, by prohibiting or restricting potentially damaging activities and equipment. The Thunder Bay sanctuary, for example, restricts the use of certain anchoring devices to minimize harm to the protected shipwrecks within its waters.

The sanctuary program has been able to leverage its resources with those of other public agencies at all levels of government to help accomplish its goals. OMB, in its 2004 program assessment, cited the Monterey Bay sanctuary's coalition of 25 federal, state, and local agencies and public and private groups dedicated to protecting and enhancing water quality in the sanctuary and its watersheds. Overall, OMB found that the program has a clear purpose, is well managed, and uses the best available science and public involvement to protect marine resources. NAPA characterized the sanctuary program as offering "a unique and promising model for effective multipurpose marine governance."

Most stakeholders in marine resource protection view the sanctuary program favorably as well, and many of those we spoke with during our review were eager to see the program expand to protect additional marine areas. But NOAA has not added a new site since the designation of Thunder Bay in 2000, after Congress effectively limited it from doing so in the sanctuary act's 2000 reauthorization: as revised, the statute required NOAA to determine whether it could effectively implement management plans and inventory its resources at existing sites before designating any new ones (with the exception of Thunder Bay).

In 2005, NOAA reported that it had sufficient resources to inventory and study existing sites, but not to implement sanctuary management plans. NOAA further stated that the addition of a new site (excluding the Northwestern Hawaiian Islands monument) would have a negative impact on the system. However, it seems to us that in light of the sanctuary program's track record for effectively leveraging resources, other factors, in addition to funding, should be considered in determining whether new sanctuaries should be designated. At a minimum, NOAA should be engaged in a transparent process for developing a list of potential sites for future designation and determining the factors, criteria, and resource needs for adding sanctuaries.

In the meantime, this moratorium on site designation has had its benefits: NOAA has been able to improve its management of existing sanctuaries and avoid rapid, unmanageable growth, and our work, like the OMB and NAPA assessments, found the program to be generally well run. We did identify some management and operational enhancements that could strengthen the program and we reported them to NOAA. NOAA concurred with our findings and is currently implementing our recommendations.

AS PART OF REAUTHORIZATION, CONGRESS SHOULD CONSIDER (1) PROVIDING THE SECRETARY WITH THE FLEXIBILITY TO ESTABLISH SANCTUARY MANAGEMENT PLAN TIME FRAMES, (2) PROVIDING THE SECRETARY WITH THE SAME AUTHORITY FOR MANAGING MARINE MONUMENTS AS FOR MANAGING SANCTUARIES, AND (3) ESTABLISHING A TITLE WITHIN THE ACT THAT SPECIFIES PROTECTION OF MARITIME HERITAGE RESOURCES

Now I would like to turn to three issues that the subcommittee may want to consider as it deliberates the act's reauthorization.

1. ***Congress should consider providing the Secretary with the flexibility to establish sanctuary management plan time frames.*** Congress may want to consider modifying the time frame for developing and reviewing sanctuary management plans. Under provisions of the current act, the Secretary of Commerce and, by delegation, NOAA and the individual sanctuary sites must develop and review sanctuary management plans every 5 years. These plans are comprehensive, site-specific documents that require enormous effort to complete. They summarize existing programs and regulations, articulate goals and priorities, and guide decision making.

In mandating these plans, Congress established an important process for ensuring extensive public participation in managing marine protected areas. Individual sanctuaries go to great lengths to seek public comment on management plans and to develop action plans or new regulations that address citizens' concerns. For example, NOAA's in-progress reviews of management plans for three California sanctuaries—Cordell Bank, Gulf of the Farallones, and Monterey Bay—has entailed 36 public hearings.

In our review of the sanctuary program, we found that management plans were in place at all sanctuaries, but many had not been updated in more than 10 years (appendix III). Program managers acknowledged that these reviews should be completed in less time, but emphasized that some plans are more complex than others because of a sanctuary's size, location, types of protected resources, and level of use.

In effect, we found these plans are really living documents: every time a new threat emerges, NOAA needs to revisit the plans, develop a mitigation strategy, and seek public input. The 5-year time frame for review and update may not be realistic across the board. The Secretary should have the flexibility to establish the time frame requirements for management plans to reflect variations in the sanctuaries' complexity, circumstances, and related management challenges.

2. ***Congress should consider providing the Secretary with the same authority for managing marine monuments as for managing sanctuaries.*** The Papahānaumokuākea (Northwestern Hawaiian Islands) Marine National Monument, created under authority of the Antiquities Act rather than the marine sanctuaries act, is technically not part of the sanctuary system. Its marine portions are managed by the sanctuary program because in creating the monument, President Bush designated NOAA a co-trustee, along with the Department of the Interior and the state of Hawaii.

The monument's marine areas account for the majority of protected waters managed by the sanctuary program. These waters contain the largest coral reef ecosystem in the United States and are home to more than 7,000 marine species, including the endangered monk seal and the threatened green turtle. Nearly a quarter of the species in monument waters are found nowhere else on the planet.

The sheer size and biodiversity of the protected area pose considerable management challenges. Yet according to NOAA, the Antiquities Act does not provide for some of the valuable management tools available to NOAA under the sanctuaries act, in particular, civil penalties for violations, recovery of damages for injuries to sanctuary resources, and community-based advisory councils. NOAA is therefore unable to apply these time-tested best practices in the monument. In discussing reauthorization, the subcommittee may want to consider giving NOAA the same authorities for managing marine monuments as it has for managing marine sanctuaries.

3. ***Congress should consider establishing a title within the act that specifies protection of maritime heritage resources.*** The marine sanctuaries act also seeks to identify and protect certain areas of the marine environment that contain items of historical, cultural, or archaeological significance. These include historic shipwrecks, prehistoric archaeological sites, and a range of other cultural artifacts and remains. In fact, the first sanctuary designated under the program was established to preserve the USS Monitor—a piece of Civil War history. Twenty-five years would pass before designation of a second sanctuary dedicated to maritime artifacts: the Thunder Bay sanctuary in Lake Huron. At present, these two sanctuaries are the only ones designated solely for the purpose of protecting maritime heritage resources, although there are many other significant archeological and cultural underwater sites that might also warrant protection. In addition to inadvertent damage these resources might sustain in unprotected waters, new technology now makes many sites easier to locate, as sensing equipment has become more sophisticated, inexpensive, and available to the public. As a result, more people may be able to reach and explore these sites, increasing the risk that historical artifacts may be damaged, stolen, or otherwise lost.

To acknowledge the importance of preserving maritime history, NOAA established a Maritime Heritage Program in 2002. This initiative gives special emphasis to preserving these important, nonrenewable resources and promoting their appreciation. NOAA has also proposed the creation of a National Maritime Heritage Preservation Act to bring greater attention to these resources and provide for specific authorities. The current marine sanctuaries act gives more emphasis to protecting marine resources than to identifying and protecting maritime heritage sites. The subcommittee may want to consider establishing a title within the act that specifies protection of maritime heritage resources to help ensure they are preserved for the education and appreciation of present and future generations.

NOAA CAN TAKE SEVERAL STEPS TO STRENGTHEN MANAGEMENT OF SANCTUARY ENFORCEMENT EFFORTS

I would like to briefly discuss several enforcement issues we identified during the course of our review that warrant NOAA's attention and action.

Protection of marine resources requires active enforcement of sanctuary regulations. Sanctuary violations range from failure to comply with permit requirements to wildlife harassment, habitat alteration or destruction, and damage or removal of historical artifacts. The National Marine Sanctuary Program's approach to enforcement is twofold: (1) foster voluntary compliance through public outreach and education, and (2) maintain a law enforcement presence to prevent and detect violations.

The National Marine Fisheries Service's Office of Law Enforcement (OLE) is the NOAA component responsible for enforcing laws that protect and regulate our nation's living marine resources and their natural habitats. OLE has authority to enforce over 37 statutes, including the marine sanctuaries act, as well as a number of treaties related to conserving and protecting marine resources. But the majority of its enforcement work is in the fisheries.

Most sanctuary and enforcement officials we spoke with during our review, as well as numerous stakeholders, believe the law enforcement presence in the sanctuary system is insufficient. Since OLE is part of the Fisheries Service, its emphasis is on fisheries enforcement. The sanctuary program is part of a separate line office within NOAA—the National Ocean Service. OLE receives some funding from the sanctuary program for enforcement (approximately \$200,000 in FY 2007). It has also assigned a special agent or enforcement officer, as a collateral duty, to be a liaison with each sanctuary and the monument. However, OLE has only *one* enforcement officer dedicated full-time to sanctuary work.

At the time of our review, OLE was not tracking all sanctuary incidents or cases, so it did not have a good understanding of the number and type of regulatory violations it was finding in the sanctuaries. It has since improved its sanctuary enforcement record-keeping, as we recommended, but it is too soon to use the data to determine the overall level of enforcement activity in the sanctuaries.

Sanctuary program officials are taking steps on their own to strengthen enforcement: for the past year they have been developing a national plan with the objective of identifying and prioritizing threats to sanctuary resources, along with enforcement tools for addressing them. Sanctuary program officials need to ensure that they coordinate this effort with OLE, which will largely be responsible for implementing the plan.

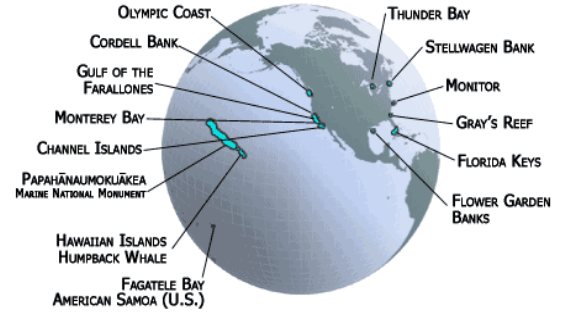
A more near-term option for strengthening enforcement in the sanctuaries is to make greater use of "summary settlement schedules" for handling lesser offenses. These schedules establish fixed fine amounts for misdemeanors and allow both federal and state enforcement officers to issue tickets on the spot. At present, only 3 of the 13 sanctuaries have these schedules. We recommended in our report that NOAA expand the types of violations covered by the schedules, increase penalty amounts as appropriate, and develop schedules for the remaining sites.

In summary, we believe there are several actions that NOAA and the sanctuary program can take to strengthen the management of enforcement in the sanctuaries:

1. Finalize the national sanctuary enforcement plan.
2. Address the inherent management risks in having sanctuary regulations managed by one line office—the National Ocean Service—but enforced by another—the National Marine Fisheries Service.
3. Ensure that OLE continues tracking sanctuary violations and uses this data to manage enforcement resources and priorities.
4. Consider broadening enforcement options by making greater use of summary settlement schedules.

Madam Chairwoman and Members of the Subcommittee, this concludes my statement. I would be happy to answer questions at this time.

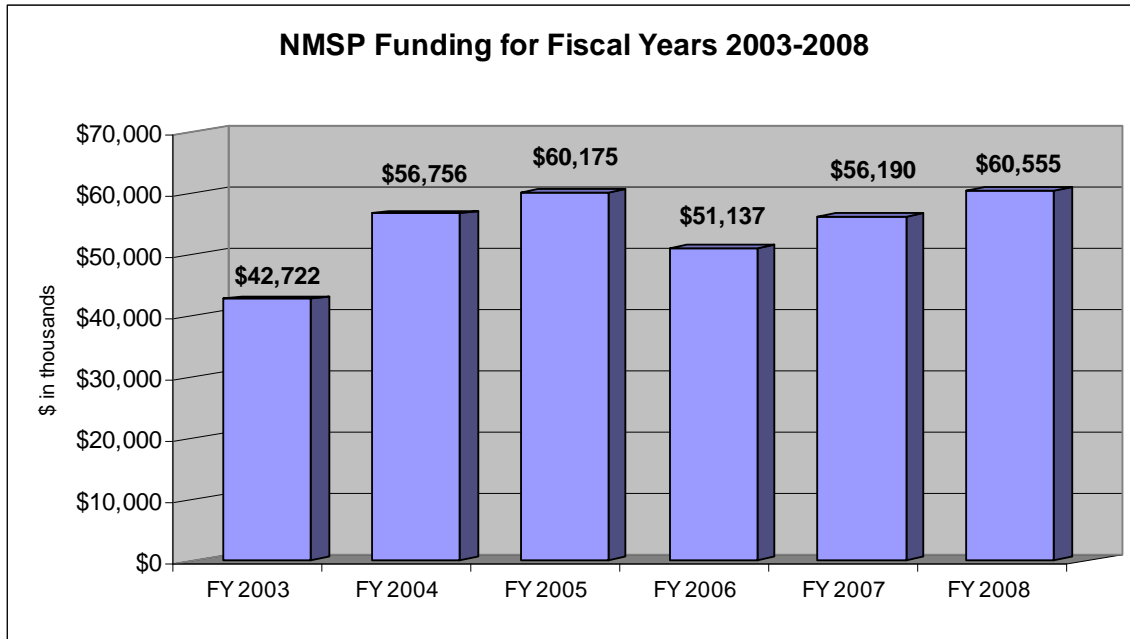
Appendix I:
National Marine Sanctuary Sites



Designation of Marine Sanctuaries

Sanctuary	Protected Resources	Year Designated	Area (square miles)	FY 08 Budget (\$, thousands)
U.S.S. <i>Monitor</i> (VA/NC)	Wreck of ironclad Civil War ship	1975	1	718.8
* Key Largo (FL)	Coral reefs, diverse fisheries, endangered species, historic wrecks	1975	100	0*
Channel Islands (CA)	Kelp forests, rocky shores, fisheries, marine mammals, endangered species	1980	1,658	1,982.0
Gulf of the Farallones (CA)	Coastal beaches, fisheries, endangered whales, almost-pristine estuaries, seabirds	1981	1,255	1,549.9
Gray's Reef (GA)	Scattered patchy limestone reefs with endangered or threatened whales and turtles, and recreational fisheries	1981	23	995.4
* Looe Key (FL)	Coral reef, diverse fisheries, endangered species, shipwrecks	1981	5.32 nautical miles	0*
Fagatele Bay (American Samoa)	Coral tropical reef ecosystem in eroded volcanic crater	1986	.25 (163 acres)	355.0
Cordell Bank (CA.)	Productive upwelling area above and around pinnacles, ridges, and the bank	1989	526	662.3
Florida Keys (FL)	Third largest coral reef system in the world, shallow near-shore habitats, diverse fisheries, endangered species, shipwrecks	1990	3,674	5,134.5
Flower Garden Banks (TX)	Three underwater banks of healthy offshore coral reefs, endangered turtles	1992	56	1,086.3
Monterey Bay (CA)	Deep marine canyons, kelp forests, rich fishing grounds, elephant seals, sea otters	1992	5,328	2,709.7
Gerry E. Studts Stellwagen Bank (MA)	Endangered whales and their habitat above and around the sand and gravel bank, shipwrecks, fisheries	1992	842	1,524.9
Hawaiian Islands Humpback Whale (HI)	Endangered whale breeding and calving grounds	1992	1,300	1,544.8
Olympic Coast (WA)	Isolated shoreline, kelp forests, offshore seabird colonies, shipwrecks	1994	3,310	1,575.7
Thunder Bay (MI)	Shipwrecks and maritime heritage	2000	448	823.9
Papahānaumokuākea Marine National Monument (HI)	Coral reefs, shipwrecks, maritime heritage, seabirds deep water around uninhabited chain of small islands and atolls	2006	138,000	7,020.3
<i>Source:</i> National Marine Sanctuary Program				
* Looe Key and Key Largo were incorporated into the Florida Keys National Marine Sanctuary in 1990.				

Appendix II



Source: NOAA Budget Office, June 13, 2008

Note: These figures include operation and capital funds. Other sources of revenue, such as fines and permit revenues, are excluded.

Appendix III

Status of Management Plan Reviews (as of June 16, 2008)

Sanctuary and Year of Previous Management Plan	Start Date ^a	Review Status
Channel Islands (1983)	June 11, 1999	In progress ^b
Cordell Bank (1989)	November 8, 2001	In progress ^c
Fagatele Bay (1984)	Starting first review in 2008	
Florida Keys (1996)	June 8, 2001	Completed – January 2008
Flower Garden Banks (1991)	September 7, 2006	In progress
Gray's Reef (1983)	November 19, 1999	Completed – October 2006
Gulf of the Farallones (1987)	November 8, 2001	In progress ^c
Hawaiian Islands Humpback Whale (2002)	First review completed in 2002 Starting second review in 2008	
Monterey Bay (1992)	November 8, 2001	In progress ^c
Olympic Coast (1994)	Starting first review in 2008	
Papahānaumokuākea (N/A)	Draft original management plan issued April 2008	
Stellwagen Bank (1993)	November 18, 1998	In progress
Thunder Bay (1999)	September 7, 2006	In progress
Monitor (1983)	Starting first review in 2008	
<p><i>Sources: Federal Register, NMSP staff</i></p> <p>^a A review begins with the publication of a notice of intent to review a sanctuary's management plan in the <i>Federal Register</i> and ends with the publication of a notice of availability of the final plan.</p> <p>^b Channel Islands sanctuary anticipates completing its management plan review by November 2008.</p> <p>^c Cordell Bank, Gulf of the Farallones, and Monterey Bay sanctuaries anticipate completing their management plan reviews in Fall 2008.</p>		