

THUNDER BAY NATIONAL MARINE SANCTUARY AND
UNDERWATER PRESERVE BOUNDARY MODIFICATION ACT

SEPTEMBER 29, 2009.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 905]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 905) to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Thunder Bay National Marine Sanctuary and Underwater Preserve in Lake Huron contains more than 100 recorded historic vessel losses.

(2) The areas immediately surrounding the Sanctuary, including the offshore waters of Presque Isle and Alcona Counties, Michigan, contain an equal number of historic vessel losses.

(3) Many of these shipwrecks and underwater cultural resources are popular recreational diving destinations, and all contribute to our collective maritime heritage.

(4) These resources are susceptible to damage from human activities, and must be properly preserved for themselves and to protect the economic viability of their contribution to national and regional economies.

(b) PURPOSES.—The purposes of this Act are—

(1) to expand the Thunder Bay National Marine Sanctuary and Underwater Preserve boundaries to encompass the offshore waters of Presque Isle and Alcona Counties, Michigan and outward to the international border between the United States and Canada; and

(2) to provide the underwater cultural resources of those areas equal protection to that currently afforded to the Sanctuary.

SEC. 3. DEFINITIONS.

In this Act:

(1) SANCTUARY.—The term “Sanctuary” means the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

SEC. 4. SANCTUARY BOUNDARY ADJUSTMENT.

(a) BOUNDARY ADJUSTMENT.—Notwithstanding any provision of law or regulation, including section 922.190 of title 15, Code of Federal Regulations, as in effect on the date of the enactment of this Act, the Sanctuary shall consist of the geographic area described in subsection (b).

(b) EXPANDED BOUNDARY ADJUSTMENT.—The area referred to in subsection (a) is all submerged lands, including the underwater cultural resources, lakeward of the mean high waterline, within the boundaries of a line formed by connecting points in succession beginning at a point along the mean high water line located approximately at 45.6262N, 84.2043W at the intersection of the northern Presque Isle and northeastern Cheboygan County boundary, then north to a point approximately 45.7523N, 84.2011W, then northeast to a point approximately 45.7777N, 84.1231W, then due east to the international boundary between the United States and Canada approximately located at 45.7719N, 83.4840W then following the international boundary between the United States and Canada in a generally southeasterly direction to a point approximately 44.5128N, 83.3186W at the intersection of the southern Alcona County and northern Iosco County boundary, returning to the first point along the mean high water line.

(c) AUTHORITY TO MAKE MINOR ADJUSTMENTS.—The Secretary may make minor adjustments to the boundary described in subsection (b) to facilitate enforcement and clarify the boundary to the public provided the resulting boundary is consistent with the purposes described in section 2(b).

(d) INCLUSION IN THE SYSTEM.—The area described in subsection (b), as modified in accordance with subsection (c), shall be managed as part of the National Marine Sanctuary System established by section 301(c) of the National Marine Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with that Act.

(e) UPDATED NOAA CHARTS.—The Secretary shall—

(1) produce updated National Oceanic and Atmospheric Administration charts for the area in which the Sanctuary is located; and

(2) include on such charts the boundaries of the Sanctuary described in subsection (b), as modified in accordance with subsection (c).

SEC. 5. EXTENSION OF REGULATIONS AND MANAGEMENT.

(a) REGULATIONS.—The regulations applicable to the Sanctuary codified in subpart R of part 922 of title 15, Code of Federal Regulations, as in effect on the date of the enactment of this Act, shall apply to the geographic area added to the Sanctuary pursuant to section 4, unless the Secretary specifies otherwise by regulation.

(b) EXISTING CERTIFICATIONS.—The Secretary may certify that any license, permit, approval, other authorization, or right to conduct a prohibited activity made pursuant to section 922.194 of title 15, Code of Federal Regulations, that exists on the date of the enactment of this Act shall apply to such an activity conducted within the geographic area added to the Sanctuary pursuant to section 4.

(c) DATE OF SANCTUARY DESIGNATION.—For purposes of section 922.194 of title 15, Code of Federal Regulations, the date of the enactment of this Act shall be deemed to be the date of Sanctuary designation.

(d) MANAGEMENT PLAN.—To the extent practicable, the Secretary shall apply the management plan in effect for the Sanctuary on the date of the enactment of this Act to the geographic area added to the Sanctuary pursuant to section 4.

PURPOSE OF THE BILL

The purpose of H.R. 905 is to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The National Marine Sanctuaries System (System) was originally authorized as Title III of the National Marine Protection, Research and Sanctuaries Act of 1972. Under this law, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), is required to identify, designate, and manage marine sanctuaries within the nation's ocean and Great Lakes waters that contain significant conservation, recreation, ecological, historical, aesthetic, scientific or educational values. Today, the System includes 13 marine sanctuaries and one national marine monument. Sanctuaries range in size from one-quarter square mile at the Fagatele Bay National Marine Sanctuary in American Samoa, to more than 135,000 square miles at the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands. In general, destructive activities like drilling, mining, dredging, dumping waste, or removing artifacts are prohibited in marine sanctuaries. Other uses such as commercial shipping and fishing, recreational fishing and boating, scientific research, scuba diving and wildlife observation, and marine tourism are generally allowed where compatible with resource protection.

The Thunder Bay National Marine Sanctuary is the only sanctuary in the Great Lakes. The Sanctuary, which is co-managed with the State of Michigan, covers 448 square miles of northwest Lake Huron off the northeast coast of Michigan's Lower Peninsula and protects a collection of over 100 nationally significant shipwrecks. Because the areas immediately north and south of the Sanctuary (known locally as "shipwreck alley") contain an equal number of historic wrecks that are popular recreational diving destinations, there is significant local interest in expanding the boundaries of the sanctuary to extend federal protection and the research, education and public outreach capabilities of the Sanctuary.

COMMITTEE ACTION

H.R. 905 was introduced on February 4, 2009 by Representative Bart Stupak (D-MI). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Insular Affairs, Oceans and Wildlife. On July 8, 2009 the Subcommittee held a hearing on the bill.

On July 29, 2009 the Subcommittee was discharged from further consideration of H.R. 905 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Bordallo (D-GU) offered an amendment in the nature of a substitute to make minor technical and clarifying changes to the boundary coordinates to accurately reflect the jurisdictional boundaries of Presque Isle County. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

After the bill was ordered reported, a drafting error was discovered which unintentionally omitted two coordinates from the southern portion of the proposed expansion area. As it was never the intention of the Committee to remove these coordinates or to change the boundaries of the southern expansion area from the boundaries in the bill as introduced, the Committee intends to correct this omission when the bill is considered on the House floor.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the “Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act.”

Section 2. Findings and purposes

Section 2 states that the resources immediately surrounding the current Thunder Bay National Marine Sanctuary ought to be properly preserved and the purpose of this Act is to expand the Sanctuary to provide equal protection to these resources.

Section 3. Definitions

Section 3 defines the terms “Sanctuary” and “Secretary.”

Section 4. Sanctuary boundary adjustment

Section 4 designates the particular geographic area that will be included in the expanded boundary of the Thunder Bay National Marine Sanctuary. This section also directs NOAA to update charts to include the modified boundaries of the Sanctuary.

Section 5. Extension of regulations and management

Section 5 ensures that regulations applicable to the Thunder Bay National Marine Sanctuary will apply to the geographic area added to the Sanctuary, that existing certifications will apply to the added geographic area and the management plan in effect for the Sanctuary on the date of enactment will apply to the added geographic area.

Additionally this section deems that the date of enactment of this Act is the date of Sanctuary designation. It should be noted that federal law enforcement and penalties within the added geographic area will only apply upon the designation. There is no intention of retroactive federal law enforcement or penalties for the added geographic area.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 905. Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act

H.R. 905 would expand the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve, located in Lake Huron and managed jointly by the National Oceanic and Atmospheric Administration (NOAA) and the State of Michigan. The proposed boundary expansion would encompass submerged lands within the Michigan counties of Presque Isle and Acona, ranging northward to the United States-Canada border.

The cost of implementing H.R. 905 is uncertain because the bill, as ordered reported by the House Committee on Natural Resources, does not specify a new southern boundary for the sanctuary. Because the legal description of the proposed expansion area omits a coordinate necessary to establish a new southern boundary, CBO cannot determine the size of the expanded sanctuary (the sanctuary currently encompasses about 448 square miles).

Information provided by committee staff, indicates that the committee intended to set the new boundary to encompass about 4,000 square miles. Based on information provided by NOAA (and assuming the availability of appropriated funds), we estimate that managing a sanctuary of that size would cost \$2 million a year—about \$1 million more than the agency currently spends at the sanctuary—beginning in fiscal year 2010. (Depending on final Congressional action to establish the southern boundary, the additional cost of managing the larger sanctuary could be more or less than \$1 million a year.) We estimate that additional costs for administrative facilities and to revise signs and maps would be less than \$100,000 over the next two or three years.

H.R. 905 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On June 16, 2009, CBO transmitted a cost estimate for S. 380, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 20, 2009. The two versions of the legislation are similar. The estimate for S. 380 included the cost to acquire a new vessel for research, monitoring, and enforcement activities at Thunder Bay. Because NOAA recently acquired a vessel that may be used for those purposes, CBO now estimates that additional spending for infrastructure under both versions of legislation would be less than we estimated earlier.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 905 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

While H.R. 905, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act, was reported out of the Natural Resources Committee by unanimous consent, Members do have concerns about the cost of the legislation to the federal taxpayer.

This legislation would increase the size of the Thunder Bay National Marine Sanctuary by almost nine times its current size. The current sanctuary and the area to be added are all waters and submerged lands of the State of Michigan, yet the federal government will be required to fund the costs associated with this expansion. This cost is estimated by the Congressional Budget Office at more than double the current budget for the sanctuary.

At a time when the costs for the enormous new Papahānaumokuākea Marine National Monument offshore Hawaii have been added to the National Marine Sanctuary Program without additional appropriations, the entire sanctuary program could suffer as a result of this legislation. The National Marine Sanctuaries Act includes a statutory moratorium on new designations enacted due to concerns about funding levels. Congress imposed this moratorium because of concerns that the National Marine Sanctuary system would grow without money to back up the burden on the National Oceanic and Atmospheric Administration. Other federal programs such as the National Park System and the National Wildlife Refuge System have serious maintenance backlogs that have been clearly documented by this Committee. The National Marine Sanctuary Program has escaped this problem largely due to this language restricting growth of the program unless sufficient funds are available.

Finally, the National Marine Sanctuary Program has enjoyed popular support for many years. One of the reasons for this popularity is that the program allows multiple uses of the offshore areas included within the program. I am pleased that H.R. 905 will not add any statutory restrictions on existing or future uses of the Thunder Bay National Marine Sanctuary.

DOC HASTINGS.

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