

Calendar No. 147

111TH CONGRESS }
1st Session }

SENATE

{ REPORT
111-64

GULF OF THE FARALLONES AND CORDELL
BANK NATIONAL MARINE SANCTUARIES
BOUNDARY MODIFICATION AND PROTEC-
TION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 212



AUGUST 4, 2009.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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GULF OF THE FARALLONES AND CORDELL BANK NATIONAL MARINE SANCTUARIES BOUNDARY MODIFICATION AND PROTECTION ACT

AUGUST 4, 2009.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 212]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 212) to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 212, the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act, is to extend the boundaries of the Gulf of Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, strengthen the protections that apply to the Sanctuaries, educate the public regarding the ecological value and national importance of those marine environments, and manage uses of the Sanctuaries under the bill and the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 et seq.).

BACKGROUND AND NEEDS

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 (16 U.S.C. 1431 et seq.). Title III of that statute authorized the Secretary of Commerce (Secretary) to designate and permanently protect areas of national significance within the marine environment due to the importance of their con-

ervation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities. In 1992, under title II of the Oceans Act (P. L. 102-587), the NMSA amended the MPRSA process for considering sanctuary designation standards and procedures. Currently, a total of thirteen national marine sanctuaries and four national marine monuments encompass approximately 150,000 square miles of marine and Great Lakes waters. Sanctuaries vary in size from one square mile to 137,792 square miles.

The NMSA established the National Marine Sanctuary Program (NMSP), which is responsible for identifying, designating, and managing ocean and Great Lakes areas as national marine sanctuaries. The NMSP has the authority to issue regulations for each sanctuary to specify the types of activities that can and cannot occur within sanctuary boundaries, which have the effect and enforceability of law. A designation document is prepared as part of a sanctuary's designation process, which defines: (1) the area of the sanctuary; (2) the characteristics of the area that give it value; and (3) the types of activities that will be subject to regulation to protect those characteristics. The National Oceanic and Atmospheric Administration (NOAA) is authorized to both recover damages from responsible parties that injure sanctuary resources and to assess civil penalties for violations of sanctuary regulations. Most sanctuaries generally prohibit material discharges into the sanctuary, the disturbance of seabed and cultural resources, and exploration and development of oil, gas, and minerals within the sanctuary.

The NMSP also establishes management plans, develops conservation policy, issues permits, and undertakes strategic planning for each sanctuary. Each sanctuary has a community-based Sanctuary Advisory Council, which is comprised of representatives from various public interest organizations, scientific and educational organizations, and commercial and recreational user groups including fishermen, government agencies, and local businesses. The Sanctuary Advisory Council advises the sanctuary manager on the designation and/or operation of a national marine sanctuary.

Regulatory changes most often occur during a five-year Management Plan Review. During this process, Sanctuary Advisory Councils, working groups, and the public may identify issues that could lead to the decision to restrict or prohibit certain activities in the sanctuary.

The NMSA has been amended and reauthorized six times, most recently in 2000, which authorized funding through the end of fiscal year 2005. The 2000 reauthorization of the NMSA included a provision that placed a limitation on the creation of new sanctuaries in an effort to address the impact of decreasing appropriations on the ability to provide sufficient maintenance and operation capabilities for established sanctuaries. However, the limitation does not prevent the expansion of existing sanctuaries.

The existing 13 national marine sanctuaries and one national marine monument have been added to the program through three different processes: (1) the NMSP process; (2) Congressional designation; and (3) Executive Order. The majority of the national marine sanctuaries were added to the System through the NMSP process. However, the Hawaiian Islands Humpback Whale National Marine Sanctuary and the Stellwagen Bank National Marine

Sanctuary were designated by provisions included in the Oceans Act of 1992, and the Florida Keys National Marine Sanctuary and Protection Act designated the Florida Keys National Marine Sanctuary, which enveloped the existing Key Largo and Looe Key National Marine Sanctuaries in 1996. The Executive Branch used authorities provided by the Antiquities Act of 1906 (16 U.S.C. 431) to designate the Papahānaumokuākea National Monument, the Marianas Trench Marine National Monument, the Pacific Remote Islands National Monument, and the Rose Atoll Marine National Monument as a marine national monuments. Pāpāhānaumokuākea National Monument is also a national marine sanctuary. To date, the Congress also has enacted legislation to expand the boundaries of one existing sanctuary. The National Marine Sanctuaries Preservation Act of 1996 added Stetson Bank to the Flower Garden Banks National Marine Sanctuary.

The Gulf of the Farallones National Marine Sanctuary, established in 1981, is 948 square nautical miles off the coast of California just west of San Francisco and is part of the United Nations' Golden Gate Biosphere Reserve. It is a breeding ground for resident harbor seals, elephant seals, harbor porpoises, Pacific white-sided dolphins, rockfish, and seabirds, including the Tufted Puffin. Thirty-six species of marine mammals migrate through the Sanctuary, including gray whales, and the Sanctuary contains a resident blue whale population, and serves as a feeding ground for both blue and humpback whale populations. The Gulf of the Farallones National Marine Sanctuary has the largest concentration of breeding seabirds in the continental United States.

The Cordell Bank National Marine Sanctuary contains an offshore granitic bank 4.5 miles wide by 9.5 miles long and comprises 399 nautical square miles of the northern California coast. It is characterized by dynamic ocean conditions and complex undersea topography due to the prevailing California current that flows southward along the coast. The Cordell Bank National Marine Sanctuary contains about 240 fish species, 69 species of seabirds, and 28 marine mammal species.

Expanding the two Sanctuaries would protect their source water, areas of biological diversity, and conserve habitat for seabirds, marine mammals, and fisheries. The existing Gulf of the Farallones and Cordell Bank National Marine Sanctuaries lie within one of only four coastal upwelling ecosystems on Earth, the only such area within the United States. Upwelling ecosystems are the most productive ocean ecosystems and provide nutrients and food that support local and migratory marine life in the Sanctuaries. Currently, the center of upwelling that provides the source waters for the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries lies outside the existing Sanctuaries' boundaries. The expansion from Point Arena to Bodega Bay in California would include the upwelling center. The Cordell Bank National Marine Sanctuary expansion area would include Bodega Canyon, a specialized habitat for a variety of species, including deepwater corals. Krill living within the Canyon are an important part of the Cordell Bank food web and are the primary diet for endangered blue whales and a dietary staple for rockfishes and coho and king salmon.

Oil and gas development activities are currently prohibited within the boundaries of both sanctuaries through regulations. This bill would place a statutory prohibition on all oil and gas leasing and permitting within the sanctuaries including transporting by pipeline.

SUMMARY OF PROVISIONS

S. 212 would modify the existing Sanctuaries' boundaries to add approximately 1,521 square nautical miles to the Gulf of the Farallones Sanctuary and 354 square nautical miles to the Cordell Bank Sanctuary. The expansion would extend the existing Sanctuaries' prohibition of the leasing, exploration, development, production, or transporting by pipeline of minerals or hydrocarbons.

The bill would direct the Secretary of Commerce to complete: (1) a draft supplemental management plan for each Sanctuary not later than 24 months after the date of enactment of the Act; and (2) a revised comprehensive management plan for each of the Sanctuaries at the conclusion of the first management review for the Sanctuaries initiated after the date of enactment of the legislation. The existing regulations for the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, including any changes made as a result of a joint management plan review for the Sanctuaries, would apply to the expansion areas. The bill would provide the Secretary with 24 months to assess and change any necessary regulations and direct the Secretary to consider appropriate regulations in the Sanctuaries for the deposit or release or introduced species and the alteration of stream and river drainage into the sanctuaries.

LEGISLATIVE HISTORY

The Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act, S. 212, was introduced by Senator Boxer on January 12, 2009. On May 20, 2008, the Committee considered a manager's amendment to this bill in an open executive session. The Committee, on voice vote, ordered S. 212 to be reported favorably, as amended. Senators Hutchison, Thune, Wicker, Isakson, and Johanns were recorded as voting against the bill.

Staff assigned to this legislation are Kristen Sarri, Democratic Professional Staff, and Todd Bertosen, Republican Senior Counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JUNE 15, 2009.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 212, the Gulf of the

Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 212—Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act

Summary: S. 212 would expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; both are located off the coast of northern California and are managed by the National Oceanic and Atmospheric Administration (NOAA).

Assuming appropriation of the amounts specified in the bill for sanctuary management and estimated to be necessary for vessel construction and acquisition activities as authorized, CBO estimates that implementing S. 212 would cost \$20 million over the 2010–2014 period. Enacting the bill would have no effect on revenues or direct spending.

S. 212 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 212 would impose private-sector mandates, as defined in UMRA, by prohibiting or restricting certain commercial and recreational activities in the areas added to the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. Based on information from NOAA, CBO estimates that the cost of the mandates would fall below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 212 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year in millions of dollars— | | | | | |
|--|--|------|------|------|------|-----------|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2010–2014 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Additional Sanctuary Operating Costs: ^a | | | | | | |
| Authorization Level | 3 | 3 | 3 | 3 | 3 | 15 |
| Estimated Outlays | 3 | 3 | 3 | 3 | 3 | 15 |
| Vessel Acquisition and Construction: | | | | | | |
| Estimated Authorization Level | 4 | 1 | 0 | 0 | 0 | 5 |
| Estimated Outlays | 0 | 2 | 2 | 1 | 0 | 5 |
| Total Spending Under S. 212: | | | | | | |
| Estimated Authorization Level | 7 | 4 | 3 | 3 | 3 | 20 |
| Estimated Outlays | 3 | 5 | 5 | 4 | 3 | 20 |

^a Average annual appropriations to manage the two marine sanctuaries at their current size total about \$2 million.

Basis of estimate: For this estimate, CBO assumes that S. 212 will be enacted by the end of fiscal year 2009 and that the amounts specifically authorized or estimated to be necessary will be appropriated for each year. The bill authorizes the appropriation of \$3

million for each of fiscal years 2010 through 2014 to manage the areas added to the two sanctuaries.

The bill also would authorize the appropriation of \$4 million for 2009 and whatever sums are necessary for 2011 through 2014 to construct or acquire an additional vessel to manage the expanded sanctuaries. Based on information provided by NOAA, CBO estimates that an additional \$1 million would be needed in 2011 to complete the acquisition of the new vessel, which is estimated to cost about \$5 million. Estimated outlays are based on historical spending patterns for NOAA programs and also reflect the assumption that NOAA would not be able to start building or acquiring a new vessel until it received full funding for the project in 2011.

Estimated impact on state, local, and tribal governments: S. 212 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: S. 212 would extend current regulations and any subsequent modifications to those regulations to the areas added to the sanctuaries by the bill. Some of those regulations would impose private-sector mandates, as defined in UMRA, by prohibiting or restricting certain commercial and recreational activities that could injure sanctuary resources. Based on information from NOAA about activities in the areas that would be added and existing regulations for the sanctuaries, CBO estimates that the cost of complying with the mandates would fall below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Shannon Fairchild and Leo Lex; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The reported bill would not authorize any new regulations, and therefore, will not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The bill, as reported, may have a slight positive impact on the nation's economy by increasing tourism and expanding sanctuary designation for conservation of living marine resources. However, the bill would prohibit or restrict certain commercial activities that could injure Sanctuary resources, and therefore, may have a slight negative impact on the nation's economy.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

The reported bill would not increase paperwork requirements for the private sector. The bill would require the Secretary of Commerce to produce updated National Oceanic and Atmospheric Administration nautical charts for the areas in which the Sanctuaries are located and complete an interim supplemental management plan for the Sanctuaries to include the expansion areas.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

This section would provide that the legislation may be cited as the “Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.”

Section 2. Findings.

The findings would describe the existing national marine sanctuaries and the national and international significance of the sanctuaries to the marine environment.

Section 3. Policy and Purpose.

This section would provide that it is the policy of the United States in this Act to protect and preserve living and other resources of the Gulf of the Farallones and Cordell Bank marine environments by: (1) extending the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; (2) strengthening the protections that apply in the sanctuaries; and (3) managing uses of the sanctuaries. The section also states that nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the sanctuaries.

Section 4. Definitions.

This section would define several terms as they apply to this Act, including: (1) Cordell Bank NMS; (2) Farallones NMS; (3) Sanctuaries; and (4) Secretary.

Section 5. National Marine Sanctuary Boundary Adjustment.

This section would expand the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary by describing the adjusted boundaries for each Sanctuary. The areas that would be included are all submerged lands and waters, including living marine and other resources within and on those lands and waters, from the mean high water line to the boundary. The section would provide for the expansion areas to be managed as part of the National Marine Sanctuary System. In addition, this section would direct the Secretary of Commerce to produce updated National Oceanic and Atmospheric Administration

nautical charts for the areas in which the Sanctuaries are located and include on those nautical charts the boundaries of the Sanctuaries, as revised by the Act.

Section 6. Prohibition of Oil and Gas Leasing and Permitting.

This section would prohibit the issuance of a lease or permit that authorizes exploration, development, production, or transporting by pipeline of minerals or hydrocarbons within the Sanctuaries as modified by section 5.

Section 7. Management Plans and Regulations.

This section would direct the Secretary of Commerce to complete a draft supplemental management plan for the Sanctuaries by not later than 24 months after the date of enactment of the Act that focuses on management in the areas added to the sanctuaries under this Act. The supplemental plan could not weaken existing resource protections. In addition, the Secretary would issue a revised comprehensive management plan for the Sanctuaries during the first management review initiated after the date of the enactment of this Act under section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) for the Sanctuaries, and issue such final regulations as may be necessary.

The section would require that revisions to each comprehensive management plan: (1) facilitate all appropriate public and private uses of the sanctuaries to which each respective plan applies consistent with the primary objective of sanctuary resource protection; (2) establish temporal and geographical zoning if necessary to ensure protection of sanctuary resources; (3) identify priority needs for research; (4) establish a long-term ecological monitoring program and database; (5) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 313 of the MPRSA (16 U.S.C. 1444); (6) ensure coordination and cooperation between sanctuary superintendents and other federal, state, and local authorities with jurisdiction over areas within or adjacent to the Sanctuaries to deal with issues affecting the Sanctuaries; (7) promote cooperation with farmers and ranchers operating in the watersheds adjacent to the Gulf of Farallones National Marine Sanctuary and establish voluntary best management practice programs; (8) promote cooperative and educational programs with fishing vessel operators and crews operating in the waters of the Sanctuaries, and (9) promote education and public awareness.

This section would permit the regulations for the Gulf of the Farallones National Marine Sanctuary (15 C.F.R. 922, subpart H) and the Cordell Bank National Marine Sanctuary (15 C.F.R. 922, subpart K), including any changes made as a result of a joint management plan review for the Sanctuaries conducted pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)), to apply to the areas added to each Sanctuary, respectively, until the Secretary modifies such regulations. The section would direct the Secretary to carry out an assessment of necessary revisions to the regulations for the Sanctuaries in a manner that ensures the protection of the resources of the Sanctuaries consistent with the purposes and policies of the NMSA and the goals and objectives for the new areas added to each Sanctuary under

section 5 of this Act. This section would require the assessment and any corresponding regulatory changes be complete within 24 months of the date of enactment of this Act. In revising the regulations for the Sanctuaries pursuant to this subsection, the Secretary would be required to consider appropriate regulations for the following activities: the deposit or release of introduced species, and the alteration of stream and river drainage into the Sanctuaries.

In addition, when revising the regulations for the Sanctuaries, the Secretary would consider exempting from further regulation under the NMSA and this Act discharges that are permitted under a National Pollution Discharge Elimination System permit in effect on the date of enactment of this Act, or under a new or renewed National Pollution Discharge Elimination System permit that does not increase pollution in the Sanctuaries and that originates in the Russian River Watershed outside the boundaries of the Gulf of the Farallones National Marine Sanctuary; or from the Bodega Marine Laboratory. The Secretary would provide for participation by the general public in the revision of the comprehensive management plans and relevant regulations under this section.

Section 8. Authorization of Appropriations.

This section would authorize \$3,000,000 for each of fiscal years 2010 through 2014 for activities other than construction and acquisition activities. In addition, the section would authorize \$3,500,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2014 for construction and acquisition activities.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

