114497

REPORT BY THE

# Comptroller General

OF THE UNITED STATES

# Marine Sanctuaries Program Offers Environmental Protection And Benefits Other Laws Do Not

The marine sanctuaries program, administered by the National Oceanic and Atmospheric Administration, preserves or restores ocean areas for their conservation, recreational, ecological, or esthetic values.

Although the program overlaps with other Federal laws that protect the marine environment, it complements their authority by offering benefits other laws do not. It

- --provides comprehensive regulation, planning, and management (within the limits of international law) to assure long-term preservation of all the resources that require protection;
- --offers environmental protection where gaps exist in the coverage other laws provide; and
- --encourages and supports research and assessment of the condition of sanctuary resources and promotes public appreciation of their value and wise use.

These benefits make the program useful in protecting designated sanctuaries.

114497

UNITED STATES GENERAL ACCOUNTING OFFICE

CED-81-37
MARCH 4, 1981

015794

Request for copies of GAO reports should be sent to:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are $3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are $1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-118370

The Honorable John B. Breaux
Chairman, Subcommittee on Fisheries
and Wildlife Conservation and the
Environment
Committee on Merchant Marine and
Fisheries
House of Representatives

Dear Mr. Chairman:

This report discusses the benefits of the National Oceanic and Atmospheric Administration's marine sanctuaries program. In response to your request and discussions with your office, we focused our review on determining whether the program is providing, or has the potential to provide, marine environmental protection over and above that which is or can be provided under other Federal statutory authorities.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretaries of Commerce, Energy, and the Interior; the Administrator, Environmental Protection Agency; appropriate House and Senate committees; Members of Congress; and other interested parties.

Sincerely yours,

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE SUBCOMMITTEE
ON FISHERIES AND WILDLIFE
CONSERVATION AND THE
ENVIRONMENT, COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

# MARINE SANCTUARIES PROGRAM OFFERS ENVIRONMENTAL PROTECTION AND BENEFITS OTHER LAWS DO NOT

## D I G E S T

Certain ocean areas are designated as marine sanctuaries to preserve or restore the areas for their conservation, recreational, ecological, or esthetic values.

Two sanctuaries were established in 1975. Four others were recently approved by President Carter and are expected to become effective in the spring of 1981. Three other ocean areas are being considered for sanctuary designation.

Appropriations for the marine sanctuaries program increased from $500,000 for fiscal year 1979 to $1.75 million for fiscal year 1980. The 1981 appropriations request is for $2.25 million.

GAO determined that the marine sanctuaries program, administered by the Department of Commerce's National Oceanic and Atmospheric Administration, is providing, or has the potential to provide, marine environmental protection over and above that which is or can be provided under other Federal statutory authorities.

Many Federal and State laws and international agreements provide authority to protect various elements of the marine environment. Although title III of the Marine Protection, Research, and Sanctuaries Act of 1972 overlaps to some extent with these other laws, it complements their authority by offering certain benefits the other laws do not provide. (See p. 6.)

CED-81-37

Tear Sheet. Upon removal, the report cover date should be noted hereon.

An important criterion in selecting ocean areas for review as possible sanctuaries recognizes the ability of existing regulatory mechanisms to protect the values of the area's resources and the likelihood that sufficient effort will be devoted to providing such protection without creating a sanctuary.

PROGRAM BENEFITS

The sanctuaries program offers a unique Federal mechanism to focus on particular geographically defined marine areas and provide comprehensive regulation, planning, and management (within the limits of international law) to assure long-term preservation of all the resources that require protection in those areas. Other pertinent Federal laws and regulatory programs that affect ocean areas do not provide for this type of comprehensive approach to area management. They are generally directed at accomplishing a single purpose, managing a single resource, or regulating a specific activity. In many cases, resource protection is an ancillary objective or goal to regulating an activity. (See p. 6.)

Congressional debate leading to title III's passage emphasized that sanctuaries should allow multiple uses to the extent such uses do not interfere with the purposes for which the sanctuaries are established.

The program also provides environmental protection where "gaps" exist in the coverage provided by other Federal regulatory authorities. For example:

--The wreck of the U.S.S. Monitor was designated a marine sanctuary because it could not be adequately protected under other Federal laws. The other laws that offer some protection for historically important sites (including shipwrecks and marine artifacts) either do not apply to State or private actions and/or do not apply beyond the 3-mile territorial sea (State waters).

--The Outer Continental Shelf Lands Act requires the Secretary of the Interior to protect the

natural resources and environment in any area of the Outer Continental Shelf where oil and gas activities are to occur. A recent court ruling held that this act does not authorize the Secretary to prescribe environmental protection measures regulating activities on the Outer Continental Shelf which do not relate to mineral leases. The Secretary, therefore, cannot protect coral and coral resources from being damaged or disturbed by marine salvage activities, anchoring by vessels, or other activities not related to offshore energy development.

--The Fishery Conservation and Management Act can protect coral from threats posed by fishing activities. However, the act cannot provide protection against anchoring and other activities by nonfishing vessels. Also, marine life and habitat (ecosystems) may not be as effectively protected under that act as they could be under the sanctuaries program.

While some may argue that such gaps or limitations in the protection provided under other laws relate to areas of little concern or to activities that pose little threat to the marine resources and environment, these gaps nevertheless represent potential threats that title III's protection could minimize. Such protection is subject, however, to international law which provides overriding limits regarding the regulation of foreign flag vessels. (See p. 15.)

NONREGULATORY PROGRAM BENEFITS

The National Oceanic and Atmospheric Administration considers certain nonregulatory program benefits to be important. The program encourages and supports research and monitoring of the condition of sanctuary resources, which permits an assessment of the cumulative impacts of all activities affecting the resources. The program also provides an educational and informational service to increase public awareness and appreciation of the value of resources and the potential for harm. These functions are intended to help assure long-term protection, as well as maximum safe use



Tear Sheet

and enjoyment, of the special resources and areas. (See p. 19.)

## CONCLUSIONS

GAO believes coverage of the gaps in other laws and the other benefits title III affords make the program useful in protecting designated sanctuaries.

GAO also believes that the marine sanctuaries program is somewhat analogous to the Department of the Interior's wildlife refuge program. There, too, other laws protect our Nation's wildlife, but that does not diminish the need for a statutory wildlife refuge program. If comprehensive wildlife protection in selected areas is desired, wildlife refuges would seem to be the best way to provide it. Similarly, if comprehensive protection of the marine environment is desired in certain areas that merit special treatment, whether due to unique characteristics or recreational value or some other pertinent factor, title III would seem to be an appropriate way to provide it to accomplish the basic objectives the Congress envisioned in establishing an effective marine sanctuaries program. (See p. 22.)

## AGENCY COMMENTS

The Department of Commerce agreed with GAO's conclusions and said that the report accurately represents the marine sanctuaries program's goals and objectives. Commerce also agreed with GAO's assessment of the program's regulatory benefits but stressed that it considers nonregulatory benefits equally important. It has begun to place greater emphasis on nonregulatory goals and objectives. (See p. 23.)

Commerce believes that international law constraints on sanctuary regulations do not undercut the program's usefulness.

GAO also discussed its report with officials of the Departments of the Interior and Energy

and the Environmental Protection Agency who are concerned with the program's administration and management. They expressed the general agreement of their agencies with the information presented. (See p. 24.)

# Contents


| | | Page |
|---|---|---|
| DIGEST | | i |
| CHAPTER | | |
| 1 | INTRODUCTION | 1 |
| | Program status | 1 |
| | Designation process | 2 |
| | Objectives, scope, and methodology | 5 |
| 2 | MARINE SANCTUARIES LEGISLATION AFFORDS ENVIRONMENTAL PROTECTION AND OTHER BENEFITS BEYOND THAT OF OTHER FEDERAL LAWS | 6 |
| | How the marine sanctuaries legislation evolved | 7 |
| | Other Federal laws protecting the marine environment | 10 |
| | Program benefits | 12 |
| | Program fills gaps in environmental protection coverage other Federal statutes provide | 15 |
| | Nonregulatory program benefits | 19 |
| | CRS study concludes that sanctuaries program offers unique benefits | 20 |
| | Private sector views | 22 |
| | Conclusions | 22 |
| | Agency comments | 23 |
| APPENDIX | | |
| I | Federal laws that protect the marine environment | 26 |
| II | Letter dated January 29, 1981, from the Acting Inspector General, Department of Commerce | 33 |

## ABBREVIATIONS

| | |
|---|---|
| CRS | Congressional Research Service |
| EIS | environmental impact statement |
| EPA | Environmental Protection Agency |
| FCMA | Fishery Conservation and Management Act |
| FWS | Fish and Wildlife Service |
| GAO | General Accounting Office |
| NMFS | National Marine Fisheries Service |
| NOAA | National Oceanic and Atmospheric Administration |
| OCS | Outer Continental Shelf |
| OCSLA | Outer Continental Shelf Lands Act |

# CHAPTER 1

## INTRODUCTION

During the past decade a number of laws were enacted or amended to deal with the competing pressures and demands placed on the Nation's natural resources and environment. Many of these laws were directed at better management and protection of the marine resources and environment.

At the request of the Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, we reviewed certain issues (see p. 5) concerning the marine sanctuaries program authorized by title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.). This statute authorizes the Secretary of Commerce, with Presidential approval, to designate areas of the ocean and certain other waters as marine sanctuaries for the purpose of "preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values." Marine sanctuaries may be designated as far seaward as the outer edge of the Continental Shelf, in other coastal waters where the tide ebbs and flows, or in the Great Lakes and their connecting waters. Title III also authorizes the Secretary to issue "necessary and reasonable regulations" to control activities permitted within designated sanctuaries. The program is administered by the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA).

### PROGRAM STATUS

From title III's enactment in 1972 until August 1980, only two sanctuaries, both relatively noncontroversial, had been established. One is the Monitor Marine Sanctuary which protects the wreck of the U.S.S. Monitor, a Civil War naval vessel. It is located southeast of Cape Hatteras, North Carolina, and covers an area 1 mile in diameter. The other is the Key Largo Coral Reef Marine Sanctuary which provides protective management of a 100-square mile coral reef area south of Miami. Both sanctuaries were established in 1975.

Four other sanctuaries were recently approved by President Carter. One extends in a 6-nautical mile zone surrounding Santa Barbara Island and the Northern Channel Islands off the California coast. The others include waters around Point Reyes-Farallon Islands off the California coast, waters at Looe Key in the lower Florida Keys, and waters at Gray's Reef off the Georgia coast. NOAA estimated that these sanctuary designations will become effective in the spring of 1981 unless both Houses of Congress adopt a concurrent resolution disapproving the designations or any of their terms. (See p. 4.)

No funds were appropriated or requested to be appropriated for the marine sanctuaries program before fiscal year 1979. The program operated with funds reprogramed from other NOAA activities. The appropriations for fiscal years 1979 and 1980 were $500,000 and $1.75 million, respectively. The administration requested $2.25 million for the program for fiscal year 1981.

The program was given increased visibility as a result of the President's May 1977 environmental message to the Congress which stressed the need to protect certain ocean areas and marine resources from the conflicting and potentially harmful effects of various types of development, particularly sensitive areas scheduled for oil and gas leasing sales. The President singled out title III as a means of providing such protection and instructed the Secretary of Commerce

> "* * * to identify possible marine sanctuaries in areas where development appears imminent, and to begin collecting the data necessary to designate them as such under the law."

NOAA responded to this directive by publicizing draft site selection criteria and requesting Federal, State, and local agencies and the public to recommend appropriate sites for NOAA to consider. By February 1978, about 170 nominations had been received from public and private sources. After NOAA had taken a preliminary look at the suggested sites and eliminated duplicate nominations, it reduced to about 100 sites the number of areas which were to receive further consideration.

NOAA issued revised regulations in July 1979 to clarify and formalize the policies and objectives of the marine sanctuaries program and the criteria and procedures for nominating, evaluating, and designating areas as sanctuaries. The revised regulations established a process involving several levels of review--each successive step requiring more extensive evaluation; consultation and coordination with various Federal, State, and local agencies; and public participation.

## DESIGNATION PROCESS

The new procedures require NOAA to review each site that is recommended for sanctuary designation, within 3 months after receiving the nomination, to determine whether it should be placed on NOAA's list of recommended areas to be given further consideration. This list, which is to be published twice a year in the Federal Register, is intended to provide public notice of sites that might be looked at more closely because they meet one or more of the following broad resource criteria set forth in the regulations.

--Area contains important habitat on which rare, endangered, threatened, or valuable species depend.

--Area contains a marine ecosystem 1/ of exceptional productivity.

--Area provides exceptional recreational opportunity and values.

--Area contains historic or cultural artifacts of widespread public interest.

--Area contains distinctive or fragile ecological or geologic features of exceptional scientific research or educational value.

NOAA's initial list of recommended areas was published in the October 31, 1979, Federal Register and included all (about 70) of the sites that had been suggested to NOAA to date that met one or more of the above criteria. Sites that did not meet such criteria were not included. Notice of sites added to the list is also published in the Federal Register.

NOAA's next step in the designation process is to select sites from the list of recommended areas as "active candidates" for further evaluation as possible sanctuaries. The criteria for selecting an active candidate is more specific and recognizes such factors as

--the severity and imminence of existing or potential threats to the resources, including the cumulative effect of various human activities that individually may be insignificant;

--the ability of existing regulatory mechanisms to protect the values of the area's resources and the likelihood that sufficient effort will be devoted to accomplishing those objectives without creating a sanctuary;

--the esthetic qualities of the area;

--the type and estimated economic value of the natural resources and human uses in the area which may be foregone if a sanctuary were established; and

--the economic benefits to be derived from protecting or enhancing the resources within the proposed sanctuary area.

---

1/A community of marine organisms and their environment functioning interrelatedly as a unit of nature.

After selecting an active candidate, NOAA will distribute an "issue paper" which reviews the area's resources and possible boundary and regulatory alternatives. Public workshops are then held in areas most affected by the selection to discuss the issue paper and obtain public views on the desirability of establishing a sanctuary.

If the information gathered to this point indicates that the site deserves further evaluation, NOAA will prepare and distribute a draft environmental impact statement (EIS) which analyzes and assesses the impact of the proposed designation and regulations and the other alternatives considered. Formal public hearings will also be held in the affected coastal area. Public comments presented at these hearings, or submitted to NOAA in response to the draft EIS, and proposed regulations are to be considered by NOAA in preparing the final EIS. NOAA will then undertake the final statutorily required consultations with designated Federal agencies, and the comments of these agencies will be transmitted to the President when a marine sanctuary proposal is submitted for approval. The sanctuary designation becomes effective after Presidential approval unless one of the following actions takes place.

--If a sanctuary includes State waters 1/ and is deemed unacceptable by the Governor, the Governor may nullify the designation of all or part of the State waters or certain terms or regulations affecting the State waters.

--Both Houses of Congress may adopt a concurrent resolution which disapproves the designation or any of its terms. This two-house congressional veto provision was added as an amendment to title III when the program was reauthorized for fiscal year 1981 (Public Law 96-332, approved August 29, 1980).

As of January 1981, NOAA had three areas under consideration as active candidates for marine sanctuary designation. These included Flower Garden Banks in the Gulf of Mexico; Monterey Bay off the coast of California; and waters southeast of St. Thomas, Virgin Islands. Public workshops had been held on each of the proposed sanctuaries, and public hearings had been held on one (Flower Garden Banks). The final EIS was being prepared for this proposed sanctuary, and draft EISs were being prepared for the other two.

---

1/State waters generally extend outward 3 miles from the coastline. This zone is generally referred to as the territorial sea.

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with discussions with the subcommittee chairman's office, we focused our review on determining whether the marine sanctuaries program is providing, or has the potential to provide, marine environmental protection over and above that which is or can be provided under other Federal statutory authorities.

In making this determination, we analyzed the statutory authority for the marine sanctuaries program; its legislative history; pertinent features of other Federal laws that protect the marine environment; relevant studies on the program; and pertinent NOAA policies, objectives, regulations, reports, and administrative procedures. We met with NOAA and other Federal officials from the Departments of Commerce, Energy, Interior, State, and Transportation; the Congressional Research Service (CRS); and the Environmental Protection Agency (EPA). We also met with representatives of environmental and conservation groups and the oil and gas and fishing industries to obtain their views on the need for and benefits of the program and how it affects their activities and concerns. We also analyzed interagency correspondence and written public comments, particularly from organizations of marine user groups, relating to program policies and administrative actions.

We coordinated our work with CRS which the subcommittee chairman had requested to address certain policy aspects of the marine sanctuaries program and to provide information on the protection of the marine environment provided by Federal statutory and regulatory authorities (see p. 20).

We did not evaluate the program's effectiveness or examine its activities to determine whether they were efficiently conducted.

## CHAPTER 2

## MARINE SANCTUARIES LEGISLATION AFFORDS ENVIRONMENTAL PROTECTION AND OTHER BENEFITS BEYOND THAT OF OTHER FEDERAL LAWS

We believe the legislative intent of the marine sanctuaries statute was to provide a Federal mechanism for identifying special marine areas with unique conservation, recreational, ecological, or esthetic values and establishing comprehensive planning and management frameworks to assure the long-term protection of such areas and their distinctive resources. The intent also was to allow and coordinate multiple uses which are compatible with the sanctuaries' purposes. Many other Federal and State laws and international agreements also provide authority to protect various elements of the marine environment. Although title III of the Marine Protection, Research, and Sanctuaries Act overlaps to some extent these other laws, it complements their authority by offering certain environmental protection benefits not provided under such laws.

The marine sanctuaries program offers a unique mechanism to focus on particular geographically defined marine areas and provide comprehensive regulation, planning, and management (within the limits of international law) 1/ to preserve all the resources that require protection in those areas. Other pertinent Federal laws that affect ocean areas do not provide for this type of comprehensive approach to area management. They are generally directed at accomplishing a single purpose, managing a single resource, or regulating a specific activity. In many cases, resource protection is an ancillary objective or goal.

Congressional debate leading to title III's passage emphasized that sanctuaries should not be set aside as marine wilderness areas, but rather should allow other uses (including oil and gas production) to the extent such uses did not interfere with the purposes for which the sanctuaries were established. The program was designed to address multiple-use conflicts and regulate other uses in a designated sanctuary

---

1/Because international law limits Federal authority on the high seas, the marine sanctuaries statute (like most other Federal statutes affecting the ocean) cannot regulate foreign flag vessels navigating on the high seas, except in accordance with rules and principles of international law.

only to the extent necessary to maintain the recognized values of the area's marine resources and environment.

The marine sanctuaries program also fills "gaps" in Federal regulatory authority affecting the protection of marine resources; that is, it can offer benefits not available under other Federal laws. These include:

--Protecting shipwrecks, marine artifacts, and underwater historical landmarks beyond the territorial sea (such as the U.S.S. Monitor which has been designated as a marine sanctuary since January 1975).

--Protecting coral and coral resources from damage or disturbance (such as might be caused by recreational vessels anchoring on coral reefs).

--Protecting marine life or habitat not protected under wildlife protection laws but, because of their unique characteristics or locations, may be deemed worthy of special treatment.

--Protecting ocean waters beyond the territorial sea from the dumping of common trash and other substances not regulated under other laws.

The marine sanctuaries program also provides for research and monitoring of the overall condition of the resources in sanctuaries. This nonregulatory program benefit permits an assessment of the cumulative impacts of all activities affecting the resources. Certain other laws may provide for evaluation of the impact from the specific activity they regulate but do not provide for evaluation of the overall impact from all activities in a particular area. Another nonregulatory program benefit provides an educational and informational service to increase public awareness and appreciation of the value and importance of marine resources. These program functions are intended not only to help assure long-term protection of specific areas, but also to maximize safe use and enjoyment of the resources.

## HOW THE MARINE SANCTUARIES LEGISLATION EVOLVED

To address the basic question as to what statutory benefits are provided under title III, it is important to understand the congressional intent leading to title III's passage. The legislative history clearly conveys the concept that the legislation was to permit multiple uses of marine resources while protecting such resources and their environment.

The legislative history of the marine sanctuaries program dates back to 1968 when several bills were introduced in the 90th Congress to establish marine sanctuaries off the coasts of California and certain other areas. These bills were largely the result of strong public reaction and concern over the degradation of popular marine recreation areas from oilspills and increased dumping of waste materials into coastal waters. Because the bills were also directed at instituting moratoria on mineral exploration in areas which would be considered for sanctuary designation, they encountered strong industry opposition. They were not reported out of the House Committee on Merchant Marine and Fisheries.

A number of bills were introduced in the 91st and 92nd Congress to prohibit ocean dumping. Some of these bills, along with several other bills introduced in those Congresses, also called for establishing marine sanctuaries. Hearings were held in both the House and Senate on the proposed legislation.

In July 1971, the House Committee on Merchant Marine and Fisheries reported out a bill which provided for the regulation of ocean dumping and, among other things, included a provision (title III) for establishing marine sanctuaries. The House report 1/ accompanying the bill explained the need for sanctuaries legislation as follows:

> "Title III deals with an issue which has been of great concern to the Committee for many years: the need to create a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man. This need may stem from the desire to protect scenic resources, natural resources or living organisms; but it is not met by any legislation now on the books. This title will permit the Secretary of Commerce, acting through NOAA, to designate certain areas up to the edge of the Continental Shelf as marine sanctuaries, subject only to the powers of the Governors of the coastal states to approve or disapprove such portions of the proposed sanctuaries as may lie within the boundaries of those states' territorial jurisdiction. It also provides adequate sanctions to permit the Secretary to regulate these sanctuaries."

This bill (H.R. 9727) passed the House in September 1971.

---

1/H. Rept. 361, 92d Cong., 1st Sess. 15 (1971).

Remarks made during the floor debate on the House bill clearly demonstrated that the congressional intent in establishing marine sanctuaries was not to prohibit multiple uses, but to assure that all uses were compatible with the sanctuaries' purposes. For example, one Congressman said that the House report

> "* * * makes it abundantly clear that the designation of a marine sanctuary is not intended to rule out multiple use of the sea surface, water column or sea bed. Any proposed activity must, however, be consistent with the overall purpose of this title. An inconsistent use, in my opinion, would be one which negates the fundamental purpose for which a specific sanctuary may be established."

Another said that:

> "Title III in this bill is the result of 4 years of in-depth inquiry and consultation with all pertinent departments and agencies of the executive branch. Throughout this protracted period of investigation and consideration, the original marine sanctuaries concept has been changed from one which would have called for a complete oil drilling moratorium to one which would permit drilling within the purposes of this title."

After considering the House-passed bill, the Senate Committee on Commerce reported an amended version which the Senate passed in November 1971. The Senate report 1/ explained that the amended bill omitted the sanctuaries provision for the following reasons.

--The committee pointed out that control over the superjacent water column outside the limits of the territorial sea and the contiguous zone was beyond U.S. jurisdiction. It believed that legislation authorizing sanctuaries in such areas would be ineffective unless international agreements were executed to establish sanctuaries and regulate sanctuary activities.

--The committee believed that, if the purpose of proponents of marine sanctuaries was to control or prohibit the exploitation of seabed and subsoil resources, such authority already existed under the Outer Continental Shelf Lands Act.

---

1/S. Rept. 451, 92d Cong., 1st Sess. 15 (1971).

A conference committee was convened to resolve differences between the House and Senate versions of H.R. 9727. On October 9, 1972, it agreed to a compromise bill which included the title III marine sanctuaries provision passed by the House with certain modifications affecting the title's applicability to foreign citizens. In explaining the modifications, 1/ the conference committee stated:

> "The committee on conference adopted the House approach, but modified the language in some respects to make it clear that the regulations and enforcement activities under the title would apply to non-citizens of the United States only to the extent that such persons were subject to U.S. jurisdiction, either by virtue of accepted principles of International law, or as a result of specific intergovernmental agreements."

The proposed legislation (cited as the Marine Protection, Research, and Sanctuaries Act) was signed into law on October 23, 1972.

In a 1977 study 2/ of the marine sanctuaries program, the Center for Natural Areas analyzed the program's legislative history and concluded that title III is a broad-based comprehensive Federal statute capable of striking a balance between the pressures to develop and exploit marine areas for their resources and the need to protect and conserve important marine areas and resources for their distinctive values.

## OTHER FEDERAL LAWS PROTECTING THE MARINE ENVIRONMENT

There are numerous Federal laws designed to protect elements of the marine environment. Many have been passed or amended since the marine sanctuaries statute was enacted. Examples are mentioned below and discussed in greater detail in appendix I to the extent they might affect title III's usefulness.

---

1/H. Rept. 1546, 92d Cong., 2d Sess. 18 (1972).

2/"An Assessment of the Need for a National Marine Sanctuaries Program," a study prepared for NOAA by the Center for Natural Areas--a nonprofit research corporation specializing in environmental management, Apr. 1977.

A few Federal laws authorize protection to the marine environment by imposing requirements on Federal activities which significantly impact on the environment, whether on land or in ocean and/or coastal waters. For example, the National Environmental Policy Act of 1969 requires Federal agencies to consider environmental values in making decisions on proposed actions and to take steps necessary to preserve the environment. It also requires that EISs be prepared.

A number of other laws offer protection of the marine environment by regulating specific activities that are conducted in ocean and/or coastal waters. Two examples are the Fishery Conservation and Management Act of 1976 (FCMA), which regulates fishing, and the Outer Continental Shelf Lands Act (OCSLA), which regulates mineral exploration and development. Other laws regulate such activities as vessel traffic and the construction and operation of deepwater ports.

Some laws protect the marine environment by prohibiting or restricting discharges and dumping into ocean, coastal, and certain other waters. Two examples are the Federal Water Pollution Control Act, as amended, (commonly referred to as the Clean Water Act) and title I of the Marine Protection, Research, and Sanctuaries Act (commonly called the Ocean Dumping Act). The Clean Water Act regulates the discharge of pollutants, such as oil and hazardous substances, from point sources (including vessels) into State waters, the contiguous zone, 1/ and the ocean beyond; while the Ocean Dumping Act regulates the dumping of materials that are on board a vessel or aircraft for the express purpose of dumping into ocean and coastal waters.

Other laws provide for the conservation and protection of certain species of wildlife and prohibit or restrict human actions that would cause them to be threatened or harmed. One example is the Endangered Species Act of 1973, which protects fish, wildlife, and plant species that the Secretaries of Commerce or the Interior designate as endangered or threatened. Another example is the Marine Mammal Protection Act of 1972, which places a moratorium on taking any marine mammal without a permit from the Departments of Commerce or the Interior, depending on the species involved.

A few laws, such as the Antiquities Act, protect historical landmarks (including shipwrecks and other marine artifacts).

---

1/The contiguous zone extends from 3 to 12 miles outward from the U.S. coastline, bordering on the outward edge of the territorial sea.

PROGRAM BENEFITS

While it is apparent that title III has some redundancy with many of these and other Federal laws (see app. I), its comprehensive approach to area management and protection distinguish it from the other laws. Title III authorizes the only Federal program to comprehensively manage and protect marine areas as units, and it provides certain other "protection" not available under other laws.

Only under title III may an area of the ocean or other coastal waters be set aside for preservation and the activities in the area be limited to those that are consistent with and compatible to the basic preservation purpose. For example, the Key Largo Coral Reef Marine Sanctuary is being managed to protect the coral reefs and ecosystems, as well as the numerous shipwrecks, and to preserve the special recreational and esthetic values of the area. Several activities are allowed as long as they are conducted in a manner consistent with preserving the marine environment. These include: recreational boating and fishing, snorkeling and scuba diving, commercial transport, fisheries activities, and scientific endeavors.

The following activities are prohibited in the Key Largo Sanctuary: spearfishing or removal or destruction of coral and other natural marine features; dredging, filling, excavating, and building activities; discharge of refuse and polluting substances; and removal or tampering with shipwrecks and other archeological or historical resources. Special anchoring procedures are also required to avoid damage to coral formations. While some of these activities would be prohibited or restricted under other laws, it is not likely that the other laws would be enforced in a coordinated manner, as discussed below, to accomplish the marine sanctuaries program's comprehensive environmental preservation objectives in the absence of a sanctuary.

The Key Largo Coral Reef was permanently withdrawn from Outer Continental Shelf (OCS) mineral leasing and designated a preserve by a Presidential proclamation issued on March 17, 1960, under the authority of the OCSLA. The Department of the Interior issued regulations in September 1960 designed to regulate activities and protect and conserve the coral and other resources of the seabed in the preserve. A NOAA official who was a former marine sanctuaries coordinator told us that the Federal regulations were never enforced and that Interior later determined that it did not have the authority under the OCSLA to promulgate regulations affecting living marine resources in the Key Largo Coral Reef area. The NOAA official also said that after title III was enacted, NOAA, Interior,

and the State of Florida worked out arrangements to designate the Key Largo Reef as a marine sanctuary to ensure preservation of the coral and other living marine resources in the area.

In its 1977 report on the marine sanctuaries program (see p. 10), the Center for Natural Areas stated that:

> "While the President possesses authority [under the OCSLA] to permanently withdraw specific tracts from OCS leasing, such action has been taken only twice in the past 24 years. These two areas are the Key Largo Coral Reef Reserve and the Santa Barbara Ecological Preserve and Buffer Zone * * *. There exists, moreover, no program-wide regulations or guidelines for these permanent withdrawals. And, since they are made on an ad hoc and infrequent basis, it is difficult to predict those activities which might be restricted in these areas * * *."
>
> * * * * *
>
> "* * * While the establishment of the [Key Largo] preserve ensured that the area would not be leased for mineral exploration, it did not comprehensively assure the reef's protection. Consequently, the area was nominated and subsequently established as the nation's second marine sanctuary."

An article 1/ in the March 1978 Environmental Law Reporter expressed title III's usefulness in the following way when comparing it to other legislation affecting marine resources.

> "While each of these legislative responses [other than title III] concerns a particularly pressing marine resource allocation problem, collectively they have not brought the nation perceptively closer to the establishment of a balanced and comprehensive approach to the protection and use of marine resources. Moreover, because these federal actions have primarily been reactions to initiatives proposed by private entities, they cannot plan for and manage marine activities in a positive manner, a crucial element in developing a viable national marine policy. The marine sanctuaries program, on the other hand, is not limited to regulating particular marine-related activities and thus has the potential to provide a

---

1/Blumm and Blumstein, "The Marine Sanctuaries Program: A Framework for Critical Areas Management in the Sea," Environmental Law Reporter, 8 ELR 50016 (1978).

critically needed positive link in the ongoing efforts to develop a balanced and comprehensive marine policy.

"Under Title III * * *, areas of important conservation, recreation, ecological, or esthetic value in ocean, estuarine, or Great Lakes waters can be officially designated and managed to foster such values. While certain uses within these areas will be regulated, marine sanctuary designation does not serve to preclude all uses. Central to the program's potential role as an important link in the nation's efforts to formulate a balanced approach to marine management is its policy of permitting all uses compatible with a sanctuary's primary purpose."

The major purposes and management objectives of each of the other laws that provides some protection to the marine environment differ from those of title III. The U.S. Court of Appeals for the First Circuit discussed this distinction, relative to the OCSLA, 1/ in reviewing a lower court's injunction against a proposed oil and gas lease sale in the Georges Bank area off the New England coast. The appeals court said that:

"* * * while under the Marine Sanctuaries Act the land-use options of the Secretary of Commerce are much the same as those of the Secretary of the Interior under the Outer Continental Shelf Lands Act, the management objectives are different. It is thus possible that different environmental hazards would result depending on which program was invoked. Under the latter Act, the emphasis is upon exploitation of oil, gas and other minerals, with, to be sure, all necessary protective controls. Under the Sanctuaries Act, the prime management objectives are conservation, recreation, or ecological or esthetic values. * * * Drilling and mining may be allowed, but the primary emphasis remains upon the other objects. The marked differences in priorities could lead to different administrative decisions as to whether particular parcels are suitable for oil and gas operations. And should there be particular areas of Georges Bank that are uniquely important to the fishery, for example, a key breeding area or the like, management by the Secretary of Commerce, the administrator of the Fishery Act, rather than by the Secretary of the Interior might be advantageous."

---

1/ Massachusetts v. Andrus, 594 F. 2d 872, 885 (1st. Cir. 1979).

## PROGRAM FILLS GAPS IN ENVIRONMENTAL PROTECTION COVERAGE OTHER FEDERAL STATUTES PROVIDE

The marine sanctuaries program provides environmental protection where gaps exist in the coverage other Federal regulatory authorities provide. While some may argue that these gaps relate to areas of little concern or to activities that pose little threat to the marine resources and environment, they nevertheless represent potential threats that title III's protection could minimize. Such protection is subject, however, to international law which provides overriding limits regarding the regulation of foreign flag vessels.

The limitations in the environmental protection coverage provided under certain Federal laws are discussed below.

### Limitations in laws that protect shipwrecks and other underwater landmarks

The wreck of the U.S.S. Monitor was designated a marine sanctuary because it could not be adequately protected under other Federal laws. The laws that offer some protection for historically important sites (including shipwrecks) are limited.

For example, the National Historic Preservation Act of 1966 authorizes the Secretary of the Interior to maintain a national register of sites, buildings, structures, and objects which are considered to be significant in American history, architecture, archeology, and culture. Once a site or structure is listed, it can be protected from Federal or federally supported activities which would change its historic, architectural, archeological, or cultural character. However, this act does not apply to State or private actions.

Another Federal law--the Antiquities Act--authorizes the Secretary of the Interior to protect certain landmarks, structures, and objects of historic or scientific interest by designating them as national monuments. However, this act is limited to those items located on lands "owned or controlled by the United States." In a 1978 court decision, 1/ the U.S. Court of Appeals for the Fifth Circuit determined that Interior's authority for such action does not apply to marine antiquities (such as ancient wrecked vessels) located on the OCS seabed beyond the territorial sea. The United States had appealed a

---

1/Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 569 F. 2d 330 (5th Cir. 1978).

lower court's decision which denied it the right to possess an old unidentified vessel and its cargo which had been found on the OCS seabed and claimed by two Florida corporations. The Government's claim to the vessel and cargo was based partly on the assertion that the Antiquities Act applied because the OCSLA demonstrated congressional intent to extend U.S. jurisdiction and control to the OCS. However, the appeals court held that the Antiquities Act did not apply because the OCSLA limits Federal jurisdiction beyond territorial waters to that necessary to control exploration and exploitation of the OCS's natural resources.

In this court case, the United States also cited the Abandoned Property Act as a basis for its claim to the sunken Spanish vessel and cargo. This act authorizes the United States, through the General Services Administration, to protect the interests of the Government in wrecked, abandoned, or derelict property "being within the jurisdiction of the United States and which ought to come to the United States." The appeals court held this act also inapplicable, among other reasons, because the wreck was not located "within the jurisdiction of the United States."

According to the former Director of the marine sanctuaries program, at the time the U.S.S. Monitor was being considered for designation as a sanctuary--even before the abovementioned court case--an interagency committee had reviewed the Abandoned Property Act and determined that it was not a solid basis for protecting that historical sunken vessel. The former Director also said that title III provided the only vehicle for promulgating regulations to assure that neither deliberate salvage nor inadvertent anchoring or other operations harm the Monitor wreck.

Under international law, shipwrecks on the OCS beyond the territorial sea are not owned by the United States. A NOAA sanctuaries program official told us that when the Monitor Marine Sanctuary was established NOAA sent information concerning the sanctuary to international councils representing many different countries and requested that those countries respect the sanctuary regulations. This official also said that the United States has not entered into any international agreements to protect the Monitor. Therefore, the Federal regulations protecting the Monitor (which is located beyond the territorial sea) cannot be enforced against foreign flag vessels operating from foreign ports.

Limitations in laws that protect coral and marine ecosystems

Under the OCSLA, the Secretary of the Interior is required to insure the protection of the natural resources and environment in any area of the OCS where oil and gas activities are to occur (see p. 27). The limit of the OCSLA in protecting the marine environment was demonstrated in a recent decision of the U.S. Court of Appeals for the Fifth Circuit--United States v. Alexander, No. 78-5676, September 24, 1979. In that case, the appeals court reversed a lower court's decision which had convicted a marine salvor of violating an Interior regulation prohibiting anyone from engaging in any activity that damages a viable coral community on the OCS without first obtaining a permit. The appeals court said that, while the OCSLA could give the Secretary authority to promulgate regulations prohibiting coral damage by OCS lessees or by others engaged in mineral related activities, it does not authorize the Secretary to prescribe conservationist or environmental protection measures regulating activities on the OCS which do not relate to mineral leases.

The FCMA provides for comprehensive regulation of domestic and foreign fishing activities within a 200-mile fishery conservation zone to protect designated fishery resources (fish, shellfish, coral, sponges, and certain other forms of plant or animal life) from being overharvested. Regional fishery management councils have been established to develop and administer regional plans for the particular fishery stocks that require management. These plans may include measures to protect spawning grounds, nurseries, migratory routes, and other habitat areas which are determined to be critical and necessary to the life cycle of those fishery stocks. Regulatory measures governing such habitat areas of particular concern are limited, however, to cover only fishing and other activities which directly affect the particular fishery resources being managed.

Responding by letter to questions raised at a February 1980 hearing on the reauthorization of title III, 1/ NOAA's Deputy Administrator pointed out that ecosystem protection may not be as effectively accomplished under the FCMA as it could under title III in certain circumstances. He said that regional fishery management councils

---

1/Hearings before the Subcommittees on Fisheries and Wildlife Conservation and the Environment and Oceanography, House Committee on Merchant Marine and Fisheries, 96th Cong., 2nd Sess., Feb. 20, 1980.

are under substantial pressure to develop management plans for certain fishery stocks and that such plans will focus only on particular areas of significance to the entire stock in providing habitat protection. He noted that there may be particular marine areas whose degradation would not affect the full range of a fishery stock but which merit protection for the entire array of fish and other resources in the area. He concluded that, in these circumstances, the marine sanctuaries program offers protection unlikely to be afforded by the FCMA.

The Deputy Administrator referred to the protection of coral to illustrate the complementary relationship between the FCMA and title III. He said that

> "Under the FCMA coral can be protected from any threat posed by 'fishing,' but there are a wide variety of threats to coral, including anchoring by all types of vessels, dredging, discharges by vessels, and other pollution. Whatever the theoretical range of protection, against these threats under the FCMA, coral plans--or other fishery management plans--will not address the broad range of ecosystem threats, at least in the short term."

The Deputy Administrator also mentioned the limitation of the OCSLA in providing regulatory protection for coral. He concluded that "only the Marine Sanctuaries Act provides a resolution mechanism to ensure timely, comprehensive protection for special coral areas."

Limitations in wildlife protection laws

Certain species of plants, fish, and wildlife found in ocean and coastal waters can be protected under the Endangered Species Act provided they are designated as endangered (in danger of extinction throughout all or a significant portion of their ranges) or threatened (likely to become endangered within the foreseeable future). This act also protects the designated critical habitats of endangered or threatened species against Federal actions (but not State or private actions) which would destroy or adversely modify such habitats. Also, marine mammals and their habitats can be protected under the Marine Mammal Protection Act (see p. 31). However, there may be certain biological communities or forms of marine life or habitat that cannot be protected under these or other wildlife laws but--because of their unique characteristics or locations--may be deemed worthy of the special preservation treatment that can be provided under the marine sanctuaries program.

## Limitation in regulating refuse disposal

Although several laws protect the marine environment by regulating discharges and dumping into ocean and coastal waters (see pp. 11 and 29), apparently no authority exists (outside of title III) that prohibits the overboard disposal of refuse matter, such as common trash and litter, into ocean waters beyond the territorial sea. The discharge of refuse matter from vessels into U.S. territorial waters is regulated by section 13 of the Rivers and Harbors Act of 1899 (commonly referred to as the Refuse Act).

In its draft EIS on the proposed Point Reyes-Farallon Islands marine sanctuary, NOAA pointed out that the discharge of litter may reduce overall water quality, lessen the esthetic appeal of an area, and harm marine mammals that sometimes ingest or become entangled in such litter. A NOAA sanctuaries program official said that such discharges could also be potentially harmful to the coral and recreational value of an area, such as the Flower Garden coral reef banks in the Gulf of Mexico.

## NONREGULATORY PROGRAM BENEFITS

NOAA considers certain nonregulatory aspects of the marine sanctuaries program to be important program benefits. The program encourages and supports research, assessment, and monitoring of the condition of the distinctive and valuable resources in marine sanctuaries. It also provides an educational and informational service to increase public awareness and appreciation of the value of the resources and the potential for harm. NOAA believes these program functions will help assure the long-term protection, as well as the maximum safe use and enjoyment, of the special resources and areas.

NOAA has been heavily involved in research and assessment efforts at the Key Largo Coral Reef Marine Sanctuary. For example, it sponsored a major survey of the sanctuary's deep-water resources, where scientists got a good look at the resource composition of the area and located and mapped an extensive deepwater reef. NOAA also contracted for a geological baseline assessment, a biological inventory and reef health assessment, and a water quality inventory of the sanctuary. Additional scientific studies and efforts are planned to, among other things, document the extent of coral damage and disease (and associated causes) and set up underwater monitoring stations. A NOAA sanctuaries program official told us that the Florida Department of Natural Resources, which provides onsite management of the sanctuary under a cooperative agreement with NOAA, had recently employed a full-time biologist to monitor environmental conditions within the sanctuary.

as endangered or threatened. The act defines the term "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in such conduct. Commerce's National Marine Fisheries Service (NMFS) is responsible, with certain exceptions, for determining which marine species need protection and Interior's Fish and Wildlife Service (FWS) is responsible for all other species. FWS maintains and publishes an official list of endangered and threatened species; species are added to the list or are delisted or reclassified when their statuses change.

Section 7 of this act also provides for the protection of endangered and threatened species and their designated critical habitats against actions involving Federal agencies. Before 1978, Federal agencies were precluded from authorizing, funding, or carrying out actions which would jeopardize the continued existence of endangered or threatened species or destroy or adversely modify their critical habitats. The act was amended in 1978 to establish a cabinet level committee with authority to grant an exemption from the section 7 protective provisions if it determines that the benefits of a Federal action outweigh the benefits of conserving a species or its critical habitat and that no reasonable and prudent alternatives to the Federal action exist. Section 7's protective provisions do not apply to State and private actions which might jeopardize endangered or threatened species or their critical habitats.

Another example is the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), which places a moratorium on taking (harassing, hunting, capturing, or killing) any marine mammal without a permit from the Departments of Commerce or the Interior, depending on the species involved. Commerce's NMFS is responsible for the management and protection of whales, porpoises, dolphins, and pinnipeds other than walruses; Interior's FWS is responsible for walruses, otters, manatees, and other marine mammals. Special permits may be issued under certain circumstances, such as for taking mammals for scientific research or public display or for taking them incidentally during commercial fishing operations within the 200-mile fishery conservation zone.

This act calls for efforts to restore and maintain marine mammal populations at optimum sustainable population levels. The Secretaries of Commerce and the Interior may waive the moratorium on taking for particular species or populations of marine mammals under their jurisdiction provided that the species or population is at or above its determined optimum sustainable population.

Under the second category, CRS emphasized that the marine sanctuaries provision "offers a unique approach to protection of marine areas of recognized importance." According to the CRS study, no other law "has, as a primary purpose, protection of sites for conservation or ecological reasons." CRS further suggested that the environmental protection offered by other laws is "inherently different, and potentially not as effective" as the marine sanctuaries provision. For example, under the OCSLA, environmental protection safeguards are "discussed in terms of what is possible within the context of offshore energy development." Under the sanctuaries provision, "the relationship between environmental protection and marine development and use is reversed." In other words, the sanctuaries provision emphasizes environmental protection rather than marine development and "calls for balancing, or a multiple use approach" for activities that do not adversely affect the resources within designated sanctuaries.

In CRS's opinion, title III "permits a holistic approach to management of defined marine areas that is not readily attainable through resort to statutes focusing on specific environmental impacts." By focusing on all factors affecting a specific site, the comprehensive management approach affords "blanket protection" which would be "quicker and less costly * * * than piecemeal protective actions through [other laws] * * *." CRS concluded that "Without the sanctuary provision, sites could only be protected indirectly (and probably less completely) * * *." Thus, CRS believes that

> "* * * the long-term protection or restoration of marine sites for conservation, recreational, ecological, or esthetic values without the direct approach of a sanctuary program is likely to be more difficult."

In his February 13, 1980, response to the CRS study, the subcommittee chairman expressed two major concerns. First, he questioned CRS's conclusion that the sanctuaries provision fills certain gaps in Federal regulatory authority. In the chairman's opinion, such gaps either can be covered "by the proper implementation and careful coordination of the many other authorities to regulate activities in the oceans" or they relate to areas or activities that are "of very little significance * * *." Second, he raised doubts that the sanctuaries provision could, in fact, offer comprehensive management of marine sites. Noting that "International law limits Federal authority in many significant respects," the chairman concluded that it was therefore misleading to describe the program's management authority as comprehensive. The chairman indicated that CRS did not sufficiently consider the constraints of international law in its analysis. He also remained unconvinced that comprehensive management authority could be "reconciled with the basic

charter of the program." In short, the chairman believed the sanctuaries program to be more limited than CRS had indicated.

Responding to the chairman's comments, the Director, CRS, in a February 29, 1980, letter, stated that CRS believed its two-part study was a proper and objective analysis of the questions posed.

## PRIVATE SECTOR VIEWS

Representatives of the oil and gas industry, whom we met with during our review, generally supported the program concept and believed sanctuaries could serve a useful purpose in unique ocean areas where they would not conflict with oil and gas development. They were generally concerned, however, that certain proposed sanctuaries and regulations would place additional constraints on offshore energy activities. They believed that sufficient safeguards were available under the OCSLA to adequately protect marine resources and the environment from the effects of such activities.

Representatives of environmental and conservation groups generally believed the program was needed in unique areas to help resolve conflicting demands on resources and to provide environmental protection not readily available under other programs.

## CONCLUSIONS

We have pointed out that some overlapping and/or duplication exists between title III and other Federal laws and regulations. Nevertheless, on balance and considering the program's legislative history, it is apparent that title III provides certain benefits not provided under other Federal laws. We believe coverage of the gaps in other laws and the other benefits title III affords make the program useful in protecting designated sanctuaries.

The marine sanctuaries program is somewhat analogous to Interior's wildlife refuge program. There, too, many other laws protect our Nation's wildlife, but that does not diminish the need for a statutory wildlife refuge program. If comprehensive wildlife protection in selected areas is desired, wildlife refuges would seem to be the best way to provide it. Similarly, if comprehensive protection of the marine environment is desired in selected areas; that is, if certain areas merit special treatment, whether due to unique characteristics or recreational value or some other pertinent factor, title III would seem to be an appropriate way to provide it to accomplish the

basic objectives the Congress envisioned in establishing an effective marine sanctuaries program.

## AGENCY COMMENTS

The Department of Commerce agreed with our conclusions and said that our report accurately represents the marine sanctuaries program's goals and objectives. Commerce also agreed with our assessment of the program's regulatory benefits but stressed that it considers nonregulatory benefits equally important. (See app. II.)

In describing the increased emphasis on nonregulatory goals and objectives, Commerce said that the program's focus is on providing coordinated management-related research programs to implement existing management tools more effectively or to design new tools as necessary, broadening public understanding of an area's marine resources and impacts affecting such resources, and providing other onsite recreational and educational opportunities. According to Commerce:

--A 5-year research plan will be developed for each sanctuary. The research will be directed at generating information to promote effective management decisions and to better understand marine ecosystems. It will address the potential effects of human activities on the resources and the means to mitigate such impacts.

--NOAA is seeking to enhance existing surveillance and enforcement activities and, if necessary, will institute additional arrangements to ensure that sanctuary regulations are enforced. Existing authorities' activities will be monitored over time to assess their potential impact on sanctuary resources. If monitoring/surveillance efforts indicate that an activity or a proposed activity is inconsistent with sanctuary purposes, or that an existing authority is not adequately protecting the resources, NOAA may provide additional regulations in designated sanctuaries.

--Sanctuary designation may be appropriate in some cases even if additional regulations are not necessary. The decision regarding the appropriate mix of management tools will be made in the context of the management plan to be developed for each sanctuary.

Commerce also said that, in its opinion, international law constraints on sanctuary regulations do not undercut the program's usefulness. It noted that title III provides for the Secretary of State to negotiate agreements with foreign governments where

international protection is appropriate. Also, the approval of the International Maritime Consultative Organization can be sought for considering a sanctuary an "area to be avoided" by international shipping. However, approval by that organization of an "area to be avoided" does not authorize sanctions for violations.

In December 1980 we discussed a draft of this report with officials of the Interior, EPA, and Department of Energy who are concerned with the marine sanctuaries program's administration and management.

The Director of Interior's Office of OCS Program Coordination said that Interior agreed that the marine sanctuaries program has certain benefits and is a unique management tool for special resources where other tools are unavailable. He said that Interior has generally supported the program but Interior's experience has shown that the number of areas where the program would be applicable are limited. He added that, in Interior's opinion, some of the current sanctuary proposals are aimed principally at regulating oil and gas activities and pointed out that Interior already has broad authority under the OCSLA to protect the environment from the adverse effects of oil and gas development. He said that the authority results in balanced decisions on whether or not oil and gas operations should be allowed, and controls operations when they are allowed. He also said that NOAA would have a difficult time enforcing regulations to cover some of the gaps in the environmental protection other Federal laws provide, such as controls over littering.

We recognize that certain regulatory requirements may be difficult to enforce, however, we believe that appropriate regulations act as a deterrent to discourage potential violators. In commenting on our report, Commerce said that law enforcement officials believe that regulations alone--if effectively communicated to the public--will result in substantial public compliance.

An official in EPA's Ocean Programs office said that EPA agreed with our assessment and conclusions concerning the program's goals, objectives, and benefits. He indicated, however, that EPA would like to see NOAA exert more authority and effort to "push" for stronger environmental protection measures in certain ocean areas consistent with balanced use of the areas' resources.

An official in the Department of Energy's Office of Leasing Policy Development said that the Department concurred with the information in our report. He indicated, however, that the

Department would like to see NOAA place more emphasis on certifying the adequacy of existing regulations that protect marine resources and the environment and place less emphasis on issuing additional regulations. He also said that the Department concurred with Interior's views that some of the current sanctuary proposals are directed at placing constraints on oil and gas activities.

## FEDERAL LAWS THAT PROTECT THE MARINE ENVIRONMENT

The relevant features of the principal Federal laws that protect the marine environment are summarized below.

### Regulation of most Federal activities

Two Federal laws protect the marine environment by imposing requirements on most Federal activities which affect the environment in ocean and/or coastal waters. These laws also apply to land activities affecting the environment.

--The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) requires Federal agencies to consider environmental values in making decisions on proposed actions that would affect the environment, and regarding such actions, to take the necessary steps to preserve the environment. It also requires that EISs be prepared setting forth alternative considerations for major Federal actions that would significantly affect the environment.

--The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) established a program that provides Federal grants to States to help develop and administer programs to manage their coastal lands and waters. It requires that Federal and federally assisted activities significantly affecting the coastal zone be conducted, to the maximum extent practicable, in a manner consistent with federally approved State programs. Federal licenses and permits required to conduct activities that affect uses of coastal lands or waters must be consistent with the way the particular State is managing the area and protecting the resources.

### Regulation of specific activities

A number of other laws protect the marine environment by regulating specific activities that are conducted in ocean and/or coastal waters. The major laws are: the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), which regulates fishing; the Outer Continental Shelf Lands Act, 1953, (43 U.S.C. 1331 et seq.), as amended in 1978 (Public Law 95-372, 92 Stat. 629), which regulates mineral exploration and development; the Ports and Waterways Safety Act, 1972, (33 U.S.C. 1221 et seq.), as amended by the Port and Tanker

Safety Act of 1978 (Public Law 95-474, 92 Stat. 1471), which regulates vessel traffic; and the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), which regulates construction and operation of deepwater ports.

The Fishery Conservation and Management Act established a 200-mile fishery conservation zone within which the United States has exclusive management authority over most fish and other fishery resources. The act, which is to be carried out through a series of regional fishery management plans to be developed and administered by regional fishery management councils, provides a mechanism for comprehensively regulating domestic and foreign fishing activities to protect designated fishery resources from being overharvested.

The Outer Continental Shelf Lands Act established a leasing program for exploring, developing, and producing OCS mineral resources, subject to environmental safeguards. The Secretary of the Interior has primary responsibility for managing OCS mineral resources and has delegated this authority to two of Interior's bureaus. The Bureau of Land Management has overall responsibility for leasing OCS lands, imposing special lease stipulations (which have been used in some potential marine sanctuary areas), and approving applications for pipeline rights-of-way. The U.S. Geological Survey is charged with approving plans for exploratory drilling and development, issuing supplemental regulations for particular regions, supervising OCS operations from both a technical and an environmental standpoint, and enforcing regulations and stipulations applicable to specific leases.

This law was substantially amended in 1978 to, among other things, strengthen environmental safeguards relating to OCS oil and gas activities. The amendments statutorily direct the Secretary to take a number of specific measures to insure the protection of the natural resources and environment in any area of the OCS where oil and gas activities are to occur. Some of the measures require that

--the Secretary conduct studies to assess and manage the environmental impacts of oil and gas activities on the human, marine, and coastal environments;

--lessees include a description of the environmental safeguards to be implemented, and an explanation of how they will be implemented, in the development and production plan they submit to the Secretary for approval; and

--the Secretary prescribe regulations providing for the suspension and cancellation of leases where continued activity would seriously or irreparably harm life, property, or the environment.

The Ports and Waterways Safety Act, which also was amended in 1978, in part to improve environmental protection, authorizes the Secretary of Transportation to control vessel traffic on the Nation's waters as necessary to promote navigation and vessel safety and to protect the marine environment. This authority is delegated to the Coast Guard and empowers it to establish safe shipping routes (traffic separation schemes and obstacle-free fairways) for vessels to use in proceeding to, from, and between U.S. ports. The Coast Guard also issues regulations governing the design, construction, and operation of tankers using U.S. ports to transfer oil and hazardous materials.

The Deepwater Port Act establishes Federal control over the location, ownership, construction, and operation of deepwater ports (structures for use as ports or terminals for loading or unloading and further handling of oil for transportation to any State, including pipelines, pumping stations, service platforms, etc.) in waters beyond the territorial limits of the United States, in part, to protect the marine environment. The act directs the Secretary of Transportation to prescribe regulations governing deepwater ports (and vessel operations within their vicinity) to prevent pollution of the marine environment, to clean up any pollutants that may be discharged, and to otherwise prevent or minimize any adverse environmental impact from the construction and operation of deepwater ports.

The main objective of another law--the Rivers and Harbors Act of 1899--is to protect navigation and maintain the navigable capacity of the Nation's waterways. Section 10 of this act (33 U.S.C. 403) makes it unlawful to build piers, bulkheads, or other types of structures or to do excavation, dredging, or fill work in the territorial sea and other U.S. waters without a permit from the Army Corps of Engineers. The Corps' authority was extended (by section 4(e) of the OCSLA) to also cover artificial islands, installations, or other devices

and structures attached to the OCS seabed. On lands leased under the OCSLA, the Corps leaves environmental considerations to Interior and issues permits based on an evaluation of the impact of the proposed construction work and structures on navigation and national security. The Corps is primarily concerned that OCS structures such as pipelines, platforms, drill ships, and semi-submersibles do not obstruct navigation or national security.

Regulation of discharges and dumping

Some laws protect the marine environment by prohibiting or restricting discharges and dumping into ocean and coastal waters and certain other waters. The oldest, section 13 of the Rivers and Harbors Act (33 U.S.C. 407), prohibits the discharge of refuse matter into U.S. navigable waters without a permit but does not apply to the ocean beyond the territorial sea. This provision is monitored by the Coast Guard. The more significant contemporary laws are discussed below.

The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), commonly referred to as the Clean Water Act, established a program to restore and maintain the quality of the Nation's waters by regulating the discharge of pollutants from point sources (including vessels) into State waters, the contiguous zone, and the ocean beyond. The act established the National Pollutant Discharge Elimination System as the primary mechanism for regulating all pollutants except material transported for the express purpose of dumping at sea which is regulated by another law discussed below. This program, which requires a permit for discharges, is administered by EPA.

This act prohibits the discharge of harmful quantities of oil and hazardous substances, except for discharges outside the territorial sea permitted by the 1954 International Convention for the Prevention of Pollution of the Sea by Oil. When such discharges do occur, the National Contingency Plan for the removal and clean up of oil and hazardous substance discharges takes effect. The Coast Guard, in cooperation with EPA, administers the Plan which applies to discharges in the contiguous zone and activities under the OCSLA.

Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), regulates the dumping of materials by vessels and aircraft into ocean and coastal waters. This statute, commonly referred to as the Ocean Dumping Act,

applies only to materials that are on board a vessel or aircraft for the express purpose of dumping at sea. It specifically prohibits the dumping of radiological, chemical, or biological warfare agents and high-level radioactive wastes, and requires a Federal permit

--to transport any other material from the United States for the purpose of dumping into the territorial sea, contiguous zone, or ocean beyond and

--to dump any other material transported from outside the United States into the territorial sea or contiguous zone.

EPA is responsible for promulgating ocean dumping regulations, establishing criteria for reviewing and evaluating permit applications, issuing permits, and designating sites where materials (other than dredged materials) can be transported and dumped. The criteria must consider the full gamut of environmental impacts. The Corps is responsible for granting permits and approving sites where dredged materials can be transported and dumped. The Corps must apply EPA's criteria and, to the extent feasible, use EPA's recommended sites.

Some laws regulate specific types of discharges. For example, the Oil Pollution Act, 1961, (33 U.S.C. 1001 et seq.), which implements the agreements of the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, restricts the amount of oil or oily mixtures allowed to be discharged from large vessels (tankers of 150 or more gross tons and other vessels of 500 or more gross tons) into the sea. This act also imposes certain construction standards upon tankers to protect against oil loss. Another example is the 1978 amendments to the OCSLA which contain a provision prohibiting oil discharges from offshore facilities or vessels in harmful quantities.

Regulation of wildlife taking

Some laws provide for the conservation and protection of certain species of wildlife and prohibit or restrict human actions that would cause them to be threatened or harmed. For example, the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) prohibits taking fish, wildlife, and plant species that the Secretaries of Commerce or the Interior designate

as endangered or threatened. The act defines the term "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in such conduct. Commerce's National Marine Fisheries Service (NMFS) is responsible, with certain exceptions, for determining which marine species need protection and Interior's Fish and Wildlife Service (FWS) is responsible for all other species. FWS maintains and publishes an official list of endangered and threatened species; species are added to the list or are delisted or reclassified when their statuses change.

Section 7 of this act also provides for the protection of endangered and threatened species and their designated critical habitats against actions involving Federal agencies. Before 1978, Federal agencies were precluded from authorizing, funding, or carrying out actions which would jeopardize the continued existence of endangered or threatened species or destroy or adversely modify their critical habitats. The act was amended in 1978 to establish a cabinet level committee with authority to grant an exemption from the section 7 protective provisions if it determines that the benefits of a Federal action outweigh the benefits of conserving a species or its critical habitat and that no reasonable and prudent alternatives to the Federal action exist. Section 7's protective provisions do not apply to State and private actions which might jeopardize endangered or threatened species or their critical habitats.

Another example is the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), which places a moratorium on taking (harassing, hunting, capturing, or killing) any marine mammal without a permit from the Departments of Commerce or the Interior, depending on the species involved. Commerce's NMFS is responsible for the management and protection of whales, porpoises, dolphins, and pinnipeds other than walruses; Interior's FWS is responsible for walruses, otters, manatees, and other marine mammals. Special permits may be issued under certain circumstances, such as for taking mammals for scientific research or public display or for taking them incidentally during commercial fishing operations within the 200-mile fishery conservation zone.

This act calls for efforts to restore and maintain marine mammal populations at optimum sustainable population levels. The Secretaries of Commerce and the Interior may waive the moratorium on taking for particular species or populations of marine mammals under their jurisdiction provided that the species or population is at or above its determined optimum sustainable population.

Although there is no specific provision under the Marine Mammal Protection Act for protecting the habitats of marine mammals, section 1361 of the act calls for efforts to be made to protect the rookeries, mating grounds, and areas of similar significance for each species and states that the primary objective of marine mammal management should be to maintain the health and stability of the marine ecosystem. Since section 1373(a) directs the responsible Secretary to prescribe regulations consistent with section 1361's purposes and policies, it would appear that there is adequate authority under the act to promulgate regulations to protect mammal habitats.

The Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.) is a third example of a wildlife protection law. This act restricts taking or possessing fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States and taking sea otters on the high seas beyond U.S. territorial waters, except under certain circumstances as provided in the act or by regulations promulgated by the Secretary of Commerce.

UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

JAN 29 1981

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of December 5, 1980, requesting comments on the draft report entitled "The Marine Sanctuaries Program -- A Useful Program For Protecting Designated Sanctuaries.

We have received the enclosed comments of the Administrator, National Oceanic and Atmospheric Administration for the Department of Commerce and believe they are responsive to the matters discussed in the report.

Sincerely,

Frederic A. Heim, Jr.
Acting Inspector General

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

January 15, 1981

Mr. Henry Eschwege
Director
Community and Economic
Development Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

I am pleased to submit the comments of the National Oceanic and Atmospheric Administration (NOAA) on the draft GAO report, "The Marine Sanctuaries Program--A Useful Program For Protecting Designated Sanctuaries." We believe the draft report accurately represents the goals and purposes of the national marine sanctuary program and correctly concludes that the program is a useful element of the Federal oceans program. In addition, we offer the following comments.

First, the draft report focuses on the regulatory benefits of the marine sanctuary program and concludes correctly that the program offers substantial, nonduplicative benefits in this area. We agree with the report's assessment in this point, but would like to stress what are in our view the equally important non-regulatory benefits of the program. These benefits include management-related monitoring and assessment, long-term research, public education, and increased surveillance and enforcement.

The goals and objectives for each sanctuary are tailored to ensure the long-term protection of the resources and to reflect the mission and goals of the sanctuary program. Sanctuary designation emphasizes the national importance of the area's resources. The program's focus is on providing coordinated management-related research programs which will lead to more effective implementation of existing management tools or design of new tools as may be necessary, broadening public understanding of the area's marine resources and impacts to those resources, and other onsite recreational and educational/interpretive opportunities. Techniques such as brochures and pamphlets, slide shows, and other informational aids describing the sanctuary are to be readily available. Where the resources permit, interpretive programs will be established with the aim of broadening the public's awareness and understanding of the marine resource values. The types of interpretive and recreational activities will be based on an analysis of the character of the natural resources and the public use value of the area.

Long-term research and assessment is an essential function of comprehensive long-term sanctuary management. A five-year research plan, including short- and long-term research, will be developed for each sanctuary with appropriate public and government agency input. The research will be oriented toward generating information geared to promoting effective management decisions, as well as increasing our general understanding of marine ecosystems. NOAA intends to implement the research plan by providing funding, as possible, and by encouraging other funding sources to support related proposals. Designated sanctuaries provide excellent laboratories in which needed research--basic and management-related--can be encouraged. In particular, management-related research will be designed to address the potential effects of human activities on the resources with the aim of developing means of mitigating such impacts.

NOAA also seeks to enhance existing surveillance and enforcement activities and if necessary will institute additional enforcement efforts. Arrangements will be made to ensure effective enforcement. For example, in the proposed Looe Key Sanctuary, NOAA has initiated consultation at headquarters level with the U.S. Coast Guard to arrange for special surveillance attention to this high use site. An onsite enforcement presence will be provided. Surveillance activities will be designed on a site-specific basis to ensure adequate enforcement of sanctuary regulations even though consultations with law enforcement officials indicate that existence of a regulation alone--if effectively communicated to the public--will result in substantial public compliance. Activities subject to existing authorities, will be monitored to ensure they are consistent with sanctuary purposes. Activity use levels will be monitored over time to assess potential impacts on sanctuary resources. If monitoring/surveillance efforts indicate that an activity or a proposed activity is inconsistent with sanctuary purposes, or that an existing authority is not adequately protecting the resources, options up to and including NOAA regulation are available.

These non-regulatory aspects of the sanctuary program are essential elements of a comprehensive management framework and can themselves go a long way toward assuring long-term protection for special ocean resources. Indeed, in some cases sanctuary designation may be appropriate even if additional regulations are not necessary. The decision about the appropriate mix of management tools will be made in the context of individual management plans developed for each sanctuary.

In this respect designated sanctuaries under the national marine sanctuary program provide comprehensive management in a manner similar to that provided by the Department of the Interior's National Wildlife Refuge System. While within national wildlife refuges many laws protect our Nation's wildlife, the program provides for multiple use where compatible with the resources. Multiple uses within national

wildlife refuges include hunting, public grazing, picnicking, swimming, waterskiing, and commercial trapping. Within designated sanctuaries, compatible uses such as scuba and skin diving, recreational boating, certain types of recreational and commercial fishing, and various educational/interpretive programs are also allowed.

Second, the report notes in several places the potential limitation on sanctuary regulations posed by international law, but does not indicate that mechanisms are available to address this limitation should it be important in particular cases. In particular, section 302(c) of the Marine Protection, Research and Sanctuaries Act expressly provides for the Secretary of State to negotiate agreements with foreign governments where international protection is appropriate. In addition, existing international mechanisms can provide needed complementary protection for marine sanctuary sites. Approval of the International Maritime Consultative Organization (IMCO), for example, can be sought for considering the sanctuary an "area to be avoided" by international shipping under its Resolution A.378(x). We therefore do not believe that international law undercuts the utility of the marine sanctuaries program. Indeed, the marine sanctuaries program fits very well with growing international interest in programs designed to protect marine resources. NOAA has cooperated with several other countries with interest in or established programs similar to the marine sanctuaries program. We expect to continue efforts to work with other nations on protection and management of special marine areas.

Thank you for the opportunity to review this draft report. I trust these comments will be useful.

Sincerely yours,

George S. Benton
Associate Administrator

(082092)

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE

U.S.MAIL

THIRD CLASS