

1996—Par. (6)(C). Pub. L. 104-283, §9(b)(1), which directed substitution of a semicolon for “, and” at end, was executed by substituting a semicolon for the comma at end to reflect the probable intent of Congress.

Par. (7). Pub. L. 104-283, §9(b)(2), struck out “and” after “injury;”.

1992—Par. (1). Pub. L. 102-587, §2102(e)(1), substituted “1434(a)(1)(C)(v)” for “1434(a)(1)(E)”.

Par. (3). Pub. L. 102-587, §2102(a), inserted “including the exclusive economic zone,” after “jurisdiction.”.

Par. (5). Pub. L. 102-587, §2102(e)(2), struck out “and” at end.

Par. (6)(C). Pub. L. 102-587, §2102(b), added subpar. (C).

Par. (7). Pub. L. 102-587, §2102(c), inserted “or authorized” after “taken”.

Par. (9). Pub. L. 102-587, §2102(d), added par. (9).

1988—Pars. (6) to (8). Pub. L. 100-627 added pars. (6) to (8).

1984—Pub. L. 98-498 amended section generally, substituting provisions which set forth definitions for provisions which related to the designation of sanctuaries. See section 1433 of this title.

1982—Subsec. (d). Pub. L. 97-375 substituted provision that Secretary submit a biennial report on or before March 1 of every other year beginning in 1984 for provision that Secretary submit an annual report on or before November 1 of each year, and substituted reference to previous two fiscal years for reference to previous fiscal year.

1980—Subsec. (b). Pub. L. 96-332, §2(1), designated existing provisions as par. (1), struck out provision that a designation under this section would become effective sixty days after it was published unless the Governor of any State involved, before the expiration of the sixty-day period, certified to Secretary that the designation, or a specified portion thereof, was unacceptable to his State, in which case the designated sanctuary would not include the area certified as unacceptable until such time as the Governor withdrew his certification of unacceptability, and added par. (2).

Subsec. (f). Pub. L. 96-332, §2(2), designated existing provisions as par. (2), added pars. (1), (3), and (4), and, in par. (2) as so designated, substituted “The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide” for “After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this chapter and can be carried out within the regulations promulgated under this section”.

Subsec. (h). Pub. L. 96-332, §2(3), added subsec. (h).

#### REGULATIONS

Pub. L. 100-627, title II, §210, Nov. 7, 1988, 102 Stat. 3223, provided that: “Not later than one year after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Commerce—

“(1) shall propose regulations implementing the amendments made by this title [enacting sections 1440 to 1445 of this title, amending sections 1432, 1434, and 1437 of this title, and repealing section 1438 of this title]; and

“(2) shall issue final regulations implementing the amendments made by the Marine Sanctuaries Amendments of 1984 [enacting sections 1435 to 1439 of this title and amending sections 1431 to 1434 of this title].”

#### ADDITIONAL DEFINITIONS

Pub. L. 92-532, §3, Oct. 23, 1972, 86 Stat. 1052, which is classified to section 1402 of Title 33, Navigation and Navigable Waters, defines for purposes of this chapter the terms “Administrator”, “Ocean waters”, “Material”, “United States”, “Person”, “Dumping”, “District Court of the United States”, “Dredged material”, “High-level radioactive waste”, and “Transport” or “Transportation”.

### § 1433. Sanctuary designation standards

#### (a) Standards

The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—

(1) the designation will fulfill the purposes and policies of this chapter;

(2) the area is of special national significance due to—

(A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;

(B) the communities of living marine resources it harbors; or

(C) its resource or human-use values;

(3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and

(5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

#### (b) Factors and consultations required in making determinations and findings

##### (1) Factors

For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—

(A) the area’s natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

(B) the area’s historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area’s resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applica-

ble to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(I) the socioeconomic effects of sanctuary designation;

(J) the area's scientific value and value for monitoring the resources and natural processes that occur there;

(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and

(L) the value of the area as an addition to the System.

## (2) Consultation

In making determinations and findings, the Secretary shall consult with—

(A) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

(Pub. L. 92-532, title III, §303, Oct. 23, 1972, 86 Stat. 1062; Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2297; Pub. L. 102-587, title II, §2103, Nov. 4, 1992, 106 Stat. 5041; Pub. L. 106-513, §§5, 19(a)(1), (b)(3), Nov. 13, 2000, 114 Stat. 2383, 2392, 2393; Pub. L. 106-555, title II, §205(a), Dec. 21, 2000, 114 Stat. 2769.)

### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-555, in introductory provisions, substituted “the Secretary determines that—” for “the Secretary—”, added pars. (1) to (5), and struck out former pars. (1) and (2) which read as follows:

“(1) determines that—

“(A) the designation will fulfill the purposes and policies of this chapter;

“(B) the area is of special national significance due to—

“(i) its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities;

“(ii) the communities of living marine resources in harbors; or

“(iii) its resource or human-use values;

“(C) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

“(D) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (C); and

“(E) the area is of a size and nature that will permit comprehensive and coordinated conservation and management; and

“(2) finds that—

“(A) the area is of special national significance due to its resource or human-use values;

“(B) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

“(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

“(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.”

Subsec. (a)(1). Pub. L. 106-513, §5(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “determines that the designation will fulfill the purposes and policies of this chapter; and”.

Subsec. (b)(1)(J) to (L). Pub. L. 106-513, §5(b)(1), added subpars. (J) to (L).

Subsec. (b)(2)(A). Pub. L. 106-513, §19(a)(1), substituted “Resources” for “Merchant Marine and Fisheries”.

Subsec. (b)(2)(D). Pub. L. 106-513, §19(b)(3), substituted “Magnuson-Stevens Act” for “Magnuson Act”.

Subsec. (b)(3). Pub. L. 106-513, §5(b)(2), struck out heading and text of par. (3). Prior to amendment, text read as follows: “In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 1434(a)(2) of this title, a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial, governmental, or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.”

1992—Subsec. (a)(2)(B). Pub. L. 102-587, §2103(a), inserted “or should be supplemented” after “inadequate”.

Subsec. (b)(1)(A). Pub. L. 102-587, §2103(b)(1), inserted “maintenance of critical habitat of endangered species,” after “assemblages,”.

Subsec. (b)(3). Pub. L. 102-587, §2103(b)(2), substituted “1434(a)(2)” for “1434(a)(1)”, inserted “, governmental,” after “other commercial” and after “any commercial”, and inserted at end: “The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.”

1984—Pub. L. 98-498 amended section generally, substituting provisions relating to sanctuary designation standards for provisions relating to penalties. See section 1437(b) of this title.

#### CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-555, title II, §205(c), Dec. 21, 2000, 114 Stat. 2770, provided that: “This section [amending this section and section 1434 of this title] shall take effect immediately after the National Marine Sanctuaries Amendments Act of 2000 [Pub. L. 106-513] takes effect.”

#### MARINE SANCTUARIES

- Channel Islands National Marine Sanctuary.—45 F.R. 65198, Oct. 2, 1980; 15 C.F.R. part 922, subpart G.
- Cordell Bank National Marine Sanctuary.—54 F.R. 22417, May 24, 1989; 15 C.F.R. part 922, subpart K; Pub. L. 100-627, title II, §205(a)(1), Nov. 7, 1988, 102 Stat. 3217.
- Florida Keys National Marine Sanctuary.—15 C.F.R. part 922, subpart P; Pub. L. 101-605, Nov. 16, 1990, 104 Stat. 3089, as amended by Pub. L. 102-587, title II, §§2206, 2209, Nov. 4, 1992, 106 Stat. 5053, 5054.
- Flower Garden Banks National Marine Sanctuary.—56 F.R. 63634, Dec. 5, 1991; 60 F.R. 10312, Feb. 24, 1995; 15 C.F.R. part 922, subpart L; Pub. L. 100-627, title II, §205(a)(2), Nov. 7, 1988, 102 Stat. 3217; Pub. L. 102-251, title I, §101, Mar. 9, 1992, 106 Stat. 60; Pub. L. 104-283, §8, Oct. 11, 1996, 110 Stat. 3366.
- Gerry E. Studds Stellwagen Bank National Marine Sanctuary (former Stellwagen Bank National Marine Sanctuary).—58 F.R. 53865, Oct. 19, 1993; 59 F.R. 53348, Oct. 24, 1994; 15 C.F.R. 922, subpart N; Pub. L. 102-587, title II, §2202, Nov. 4, 1992, 106 Stat. 5048; Pub. L. 104-283, §§9(g), 11, Oct. 11, 1996, 110 Stat. 3368, 3369.
- Gray’s Reef National Marine Sanctuary.—46 F.R. 7942, Jan. 26, 1981; 15 C.F.R. part 922, subpart I.
- Greater Farallones National Marine Sanctuary (former Gulf of the Farallones National Marine Sanctuary; former Point Reyes-Farallon Islands National Marine Sanctuary).—46 F.R. 7936, Jan. 26, 1981; 15 C.F.R. part 922, subpart H; 62 F.R. 3788, Jan. 27, 1997; 80 F.R. 34047, June 15, 2015.
- Hawaiian Islands Humpback Whale National Marine Sanctuary.—15 C.F.R. part 922, subpart Q; Pub. L. 102-587, title II, subtitle C, §§2301-2308, Nov. 4, 1992, 106 Stat. 5055-5059; Pub. L. 104-283, §7, Oct. 11, 1996, 110 Stat. 3365.
- MONITOR National Marine Sanctuary.—40 F.R. 5349, Feb. 5, 1975; 40 F.R. 21706, May 19, 1975; 15 C.F.R. part 922, subpart F.
- Monterey Bay National Marine Sanctuary.—57 F.R. 43310, Sept. 18, 1992; 15 C.F.R. part 922, subpart M; Pub. L. 100-627, title II, §205(a)(3), Nov. 7, 1988, 102 Stat. 3217; Pub. L. 102-368, title I, §102, Sept. 23, 1992, 106 Stat. 1119; Pub. L. 102-587, title II, §2203, Nov. 4, 1992, 106 Stat. 5048.
- National Marine Sanctuary of American Samoa (former Fagatele Bay National Marine Sanctuary).—51 F.R. 15878, Apr. 29, 1986; 15 C.F.R. part 922, subpart J; 77 F.R. 43942, July 26, 2012, effective Oct. 15, 2012 (see 77 F.R. 65815).
- Olympic Coast National Marine Sanctuary.—59 F.R. 24586, May 11, 1994; 15 C.F.R. 922, subpart O; Pub. L. 100-627, title II, §205(a)(4), Nov. 7, 1988, 102 Stat. 3217; Pub. L. 102-587, title II, §2207, Nov. 4, 1992, 106 Stat. 5053.
- Thunder Bay National Marine Sanctuary and Underwater Preserve.—65 F.R. 39042, June 19, 2000; 15 C.F.R. part 922, subpart R.

#### NORTHWEST STRAITS

Pub. L. 104-283, §10, Oct. 11, 1996, 110 Stat. 3368, provided that: “No designation of an area in the Northwest Straits in the State of Washington as a national marine sanctuary under the National Marine Sanctuaries Act [16 U.S.C. 1431 et seq.] shall take effect unless that designation is specifically authorized by a law enacted after the date of enactment of this Act [Oct. 11, 1996].”

### § 1434. Procedures for designation and implementation

#### (a) Sanctuary proposal

##### (1) Notice

In proposing to designate a national marine sanctuary, the Secretary shall—

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

(C) no later than the day on which the notice required under subparagraph (A) is submitted to the Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation documents prepared pursuant to paragraph (2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.

##### (2) Sanctuary designation documents

The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:

(A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) A resource assessment that documents—

(i) present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;

(ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and

(iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary.

Public disclosure by the Secretary of such information shall be consistent with national security regulations.