

## MARINE SANCTUARIES—CONTINUED

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.

(C) A draft management plan for the proposed national marine sanctuary that includes the following:

(i) The terms of the proposed designation.

(ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.

(iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.

(iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.).

(v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.

(vi) The proposed regulations referred to in paragraph (1)(A).

(D) Maps depicting the boundaries of the proposed sanctuary.

(E) The basis for the determinations made under section 1433(a) of this title with respect to the area.

(F) An assessment of the considerations under section 1433(b)(1) of this title.

##### (3) Public hearing

No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

##### (4) Terms of designation

The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

##### (5) Fishing regulations

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to

implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

**(6) Committee action**

After receiving the documents under subsection (a)(1)(C), the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

**(b) Taking effect of designations**

**(1) Notice**

In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The des-

ignation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

**(2) Withdrawal of designation**

If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.

**(3) Procedures**

In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) and paragraph (1) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

**(c) Access and valid rights**

(1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

**(d) Interagency cooperation**

**(1) Review of agency actions**

**(A) In general**

Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.

**(B) Agency statements required**

Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval

of the action unless such Federal agency and the Secretary agree to a different schedule.

**(2) Secretary's recommended alternatives**

If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.

**(3) Response to recommendations**

The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.

**(4) Failure to follow alternative**

If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.

**(e) Review of management plans**

Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter. This review shall include a prioritization of management objectives.

**(f) Limitation on designation of new sanctuaries**

**(1) Finding required**

The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that—

(A) the addition of a new sanctuary will not have a negative impact on the System; and

(B) sufficient resources were available in the fiscal year in which the finding is made to—

(i) effectively implement sanctuary management plans for each sanctuary in the System; and

(ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.

**(2) Deadline**

If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of subparagraphs (A) and (B) of paragraph (1) have been met by all existing sanctuaries.

**(3) Limitation on application**

Paragraph (1) does not apply to any sanctuary designation documents for—

(A) a Thunder Bay National Marine Sanctuary; or

(B) a Northwestern Hawaiian Islands National Marine Sanctuary.

(Pub. L. 92-532, title III, §304, Oct. 23, 1972, 86 Stat. 1063; Pub. L. 94-62, §4, July 25, 1975, 89 Stat. 303; Pub. L. 94-326, §4, June 30, 1976, 90 Stat. 725; Pub. L. 95-153, §3, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 96-332, §3, Aug. 29, 1980, 94 Stat. 1059; Pub. L. 97-109, Dec. 26, 1981, 95 Stat. 1512; Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2298; Pub. L. 100-627, title II, §202, Nov. 7, 1988, 102 Stat. 3214; Pub. L. 102-587, title II, §2104, Nov. 4, 1992, 106 Stat. 5041; Pub. L. 104-283, §9(h), Oct. 11, 1996, 110 Stat. 3368; Pub. L. 106-513, §§6(a)-(f), 19(a)(2), (b)(4), Nov. 13, 2000, 114 Stat. 2383-2385, 2392, 2393; Pub. L. 106-555, title II, §205(b), Dec. 21, 2000, 114 Stat. 2769; Pub. L. 106-562, title III, §307(a), Dec. 23, 2000, 114 Stat. 2807.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(2)(A), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Submerged Lands Act, referred to in subsec. (a)(2)(C)(iv), is act May 22, 1953, ch. 65, 67 Stat. 29, as amended, which is classified generally to subchapters I and II (§§1301 et seq., 1311 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43, and Tables.

This Act, referred to in subsec. (b)(1), means Pub. L. 92-532, which enacted this chapter, chapter 32A (§1447 et seq.) of this title, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

2000—Subsec. (a)(1)(C). Pub. L. 106-555, §205(b)(1), struck out “the Secretary shall” before “submit a copy”.

Pub. L. 106-513, §6(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) required the Secretary to submit certain documents to committees of the House and Senate.

Subsec. (a)(2). Pub. L. 106-513, §6(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The Secretary shall—

“(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 1433(b)(3) of this title, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

“(B) make copies of the draft environmental impact statement available to the public.”

Subsec. (a)(2)(E). Pub. L. 106-555, §205(b)(2), substituted “determinations” for “findings”.

Subsec. (a)(5). Pub. L. 106-513, §19(b)(4), substituted “Magnuson-Stevens Act” for “Magnuson Act”.

Subsec. (a)(6). Pub. L. 106-513, §19(a)(2), substituted “Resources” for “Merchant Marine and Fisheries”.

Subsec. (b)(2). Pub. L. 106-513, §6(c), inserted “or System” after “of the sanctuary”.

Subsec. (d)(4). Pub. L. 106-513, §6(d), added par. (4).

Subsec. (e). Pub. L. 106-513, §6(e), substituted “management techniques and strategies,” for “management techniques,” and inserted at end “This review shall include a prioritization of management objectives.”

Subsec. (f). Pub. L. 106-513, §6(f), added subsec. (f).

Subsec. (f)(2). Pub. L. 106-562 substituted “subparagraphs (A) and (B) of paragraph (1)” for “paragraph (2)”.

1996—Subsec. (b)(3). Pub. L. 104-283 struck out “(A)” before “In computing the forty-five-day”, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, adjusted margins, and struck out former subpars. (B) and (C) which read as follows:

“(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

“(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.”

1992—Subsec. (a)(1)(C). Pub. L. 102-587, §2104(a)(2), substituted “documents, including an executive summary, consisting of—” for “a prospectus on the proposal which shall contain—”.

Subsec. (a)(5). Pub. L. 102-587, §2104(a)(3), substituted “Exclusive Economic Zone” for “United States Fishery Conservation Zone” and inserted at end “The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.”

Subsec. (a)(6). Pub. L. 102-587, §2104(a)(1), substituted “documents” for “prospectus” wherever appearing.

Subsec. (b)(1). Pub. L. 102-587, §2104(b)(1), substituted at end “, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.” for the dash after “unless” and subpars. (A) and (B) which read as follows:

“(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

“(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.”

Subsec. (b)(2). Pub. L. 102-587, §2104(b)(2), substituted “actions taken under paragraph (1)” for “actions taken under paragraph (1)(A) or (B)” and “terms of the designation not certified under paragraph (1)” for “terms of the designation not disapproved under paragraph (1)(A) or not certified under paragraph (1)(B)”.

Subsec. (b)(3), (4). Pub. L. 102-587, §2104(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which defined a Congressional resolution of disapproval for purposes of this subsection.

Subsec. (c)(1). Pub. L. 102-587, §2104(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access if the lease, permit, license, or right—

“(A) was in existence on October 19, 1984, with respect to any national marine sanctuary designated before that date; or

“(B) is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after October 19, 1984.”

Subsecs. (d), (e). Pub. L. 102-587, §2104(d), added subsecs. (d) and (e).

1988—Subsec. (b)(1). Pub. L. 100-627 inserted requirement that notice be published in the Federal Register of proposed marine sanctuary site designation within 30 months after notice of active candidacy of site for sanctuary designation or that within such period findings be published why notice has not been published.

1984—Pub. L. 98-498 amended section generally, substituting provisions relating to procedures for designation and implementation of a marine sanctuary for provisions relating to authorization of appropriations. See section 1438 of this title.

1981—Pub. L. 97-109 inserted provisions authorizing appropriations of not to exceed \$2,235,000 for fiscal year 1982, and not to exceed \$2,235,000 for fiscal year 1983.

1980—Pub. L. 96-332 inserted provisions authorizing appropriations of not to exceed \$2,250,000 for fiscal year 1981.

1977—Pub. L. 95-153 inserted provision authorizing appropriations not to exceed \$500,000 for fiscal year 1978.

1976—Pub. L. 94-326 inserted provision authorizing to be appropriated not to exceed \$500,000 for fiscal year 1977.

1975—Pub. L. 94-62 substituted provisions authorizing to be appropriated not to exceed \$10,000,000 for each of fiscal years 1973, 1974, and 1975, for provisions authorizing to be appropriated for fiscal year in which this Act was enacted and for next two fiscal years thereafter not to exceed \$10,000,000 for each such fiscal year, and inserted provisions authorizing to be appropriated not to exceed \$6,200,000 for fiscal year 1976, and not to exceed \$1,550,000 for the transition period (July 1, through Sept. 30, 1976).

#### 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 AMENDMENTS

Pub. L. 106-562, title III, §307(c), Dec. 23, 2000, 114 Stat. 2807, provided that: “Subsection (a) [amending this section] shall take effect January 1, 2001.”

Amendment by Pub. L. 106-555 effective immediately after the National Marine Sanctuaries Amendments Act of 2000, Pub. L. 106-513, takes effect, see section 205(c) of Pub. L. 106-555, set out as a note under section 1433 of this title.

### § 1435. Application of regulations; international negotiations and cooperation

#### (a) Regulations

This chapter and the regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to