

**Calendar No. 299**

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
112-134 }

THUNDER BAY NATIONAL MARINE SANC-  
TUARY AND UNDERWATER PRESERVE  
BOUNDARY MODIFICATION ACT

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 485



JANUARY 26, 2012.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

19-010

WASHINGTON : 2012

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

|                                 |                                 |
|---------------------------------|---------------------------------|
| DANIEL K. INOUE, Hawaii         | KAY BAILEY HUTCHISON, Texas     |
| JOHN F. KERRY, Massachusetts    | OLYMPIA J. SNOWE, Maine         |
| BARBARA BOXER, California       | JIM DEMINT, South Carolina      |
| BILL NELSON, Florida            | JOHN THUNE, South Dakota        |
| MARIA CANTWELL, Washington      | ROGER F. WICKER, Mississippi    |
| FRANK R. LAUTENBERG, New Jersey | JOHNNY ISAKSON, Georgia         |
| MARK PRYOR, Arkansas            | ROY BLUNT, Missouri             |
| CLAIRE MCCASKILL, Missouri      | JOHN BOOZMAN, Arkansas          |
| AMY KLOBUCHAR, Minnesota        | PATRICK J. TOOMEY, Pennsylvania |
| TOM UDALL, New Mexico           | MARCO RUBIO, Florida            |
| MARK WARNER, Virginia           | KELLY AYOTTE, New Hampshire     |
| MARK BEGICH, Alaska             | DEAN HELLER, Nevada             |

ELLEN DONESKI, *Staff Director*

JAMES REID, *Deputy Staff Director*

TODD BERTOSON, *Republican Staff Director*

JARROD THOMPSON, *Republican Deputy Staff Director*

REBECCA SEIDEL, *Republican General Counsel*

## Calendar No. 299

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 112-134

---

---

### THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY MODIFICATION ACT

---

JANUARY 26, 2012.—Ordered to be printed

---

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

#### R E P O R T

[To accompany S. 485]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 485) to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 485, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act, is to extend the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve to encompass the offshore waters of Presque Isle and Alcona counties, Michigan, and outward to the international border between the United States and Canada, and to provide protection for the underwater cultural resources.

#### BACKGROUND AND NEEDS

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) (16 U.S.C. 1431 et seq.). Title III of that Act authorized the Secretary of Commerce (Secretary) to designate and permanently protect areas of national significance within the marine environment due to the importance of their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. Under title II of the Oceans Act of 1992 (106 Stat. 5039), the National Marine Sanc-

tuaries Program Amendments Act of 1992 (NMSA) amended the MPRSA process for considering sanctuary designation standards and procedures. Currently, a total of 13 national marine sanctuaries and four national marine monuments encompass approximately 150,000 square miles of marine and Great Lakes waters. Sanctuaries vary in size from one square mile to 137,792 square miles.

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

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

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

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

The existing 13 national marine sanctuaries and one national marine monument have been added through three different processes: (1) the NMSP process; (2) Congressional designation; and (3) Executive Order. The majority of the national marine sanctuaries were added through the NMSP process. However, the Hawaiian Islands Humpback Whale National Marine Sanctuary and the Stellwagen Bank National Marine Sanctuary were designated by provisions of the Oceans Act of 1992. The Florida Keys National Marine Sanctuary and Protection Act designated the Florida Keys

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

The Thunder Bay National Marine Sanctuary was designated on October 7, 2000, marking the establishment of the first Great Lakes sanctuary. It was established for the purposes of providing long-term protection and management to more than 100 shipwrecks located entirely in State waters. The Sanctuary is located off the northeast coast of Michigan's Lower Peninsula, marked by the northern and southern limits of Alpena County and encompasses 448 square miles of Lake Huron and 115 miles of shoreline.

The legislation would expand the Sanctuary's boundaries to include a total of 225 miles of shoreline and 3,722 square miles of water. The expansion would provide protection to more than 200 additional shipwrecks important to the maritime history of Michigan and the Great Lakes. These archeological sites are also one of the Nation's best-preserved and historically-significant collections of shipwrecks.

#### SUMMARY OF PROVISIONS

The Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act would extend the Sanctuary's boundaries to include 3,722 square miles of Lake Huron and 225 miles of shoreline off Alcona, Alpena, and Presque Isle Counties in Michigan, and would extend the Sanctuary east to the International Boundary. This expansion would include more than 200 additional shipwrecks and would protect the remains of various commercial fishing sites, historic docks, and other underwater archaeological sites.

The regulations currently applicable to the Sanctuary would apply to the new area included in the Sanctuary unless the Secretary specifies otherwise. To the extent practicable, NOAA would apply the existing management plan to the area added to the Sanctuary.

A provision clarifies that no additional appropriations are made or authorized for the Thunder Bay National Marine Sanctuary and Underwater Preserve under the Act.

#### LEGISLATIVE HISTORY

The Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Act was introduced by Senator Levin on March 3, 2011, and referred to the Committee on Commerce, Science, and Transportation of the Senate. The legislation as introduced was identical to bills introduced previously in the 110th and 111th Congresses. During the 110th Congress, the Committee on Commerce,

Science, and Transportation held a hearing to consider the legislation on May 6, 2008. The Committee on Commerce, Science, and Transportation reported the bill with an amendment favorably on May 5, 2011.

#### ESTIMATED COSTS

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

*S. 485—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act*

S. 485 would expand the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve, located in Lake Huron and managed jointly by the National Oceanic and Atmospheric Administration (NOAA) and the state of Michigan. The proposed boundary expansion would encompass submerged lands within the Michigan counties of Presque Isle and Acona, ranging northward to the United States-Canada border.

Under the bill, the Thunder Bay National Marine Sanctuary and Underwater Preserve would be expanded from 448 square miles to about 4,000 square miles. Based on information provided by NOAA, CBO estimates that managing the new areas that would be added to the sanctuary would cost about \$1 million a year over the 2012–2016 period assuming the availability of appropriated funds. Enacting S. 485 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 485 contains no intergovernmental or private-sector mandates as define in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

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

#### REGULATORY IMPACT STATEMENT

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

##### NUMBER OF PERSONS COVERED

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

##### ECONOMIC IMPACT

The bill, as reported, is expected to have a positive impact on the nation's economy by increasing tourism and expanding sanctuary designation for historic resources.

##### PRIVACY

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

## PAPERWORK

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

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

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

*Section 2. Findings and purposes*

This section would state that the purpose of the Act is to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve to encompass the offshore waters of Presque Island and Alcona counties in Michigan and outward to the international border between the United States and Canada to protect the underwater cultural resources.

*Section 3. Definitions*

This section would define “Sanctuary” as the Thunder Bay National Marine Sanctuary and Underwater Preserve, and “Secretary” as the Secretary of Commerce.

*Section 4. Sanctuary boundary adjustments*

This section would modify the existing Thunder Bay National Marine Sanctuary and Underwater Preserve boundaries to include the submerged land and underwater resources off of Alcona, Alpena, and Presque Isle counties in Michigan and outward to the international boundary with Canada. It would also permit the Secretary to make minor adjustments to the boundary to facilitate enforcement and clarify the boundary to the public. The modified Sanctuary would be managed as part of the National Marine Sanctuary System established by section 301(c) of the National Marine Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with that Act. The Secretary would produce updated NOAA nautical charts for the area in which the Sanctuary is located.

*Section 5. Extension of regulations and management*

This section would apply existing regulations of the Thunder Bay National Marine Sanctuary and Underwater Preserve to the expanded sanctuary, unless the Secretary specifies otherwise by regulation. In addition, the Secretary would have the authority to certify that any license, permit, approval, other authorization, or right to conduct a prohibited activity that currently exists in the sanc-

tuary shall apply to such an activity conducted within the expanded sanctuary. To the extent practicable, the Secretary would apply the management plan currently in effect for the sanctuary to the expanded sanctuary.

*Section 6. Construction*

This section would clarify that no additional appropriations are made, authorized, or required for the Thunder Bay National Marine Sanctuary and Underwater Preserve under the Act.

CHANGES IN EXISTING LAW

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