

(Pub. L. 92-522, title IV, § 409, formerly title III, § 309, as added Pub. L. 102-587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5066; renumbered title IV, § 409, and amended Pub. L. 103-238, § 24(b), (c)(7), (8), Apr. 30, 1994, 108 Stat. 565, 566.)

AMENDMENTS

1994—Par. (1). Pub. L. 103-238, § 24(c)(7), made technical amendment to reference to section 1421d(a) of this title to reflect renumbering of corresponding section of original act.

Par. (5). Pub. L. 103-238, § 24(c)(8), made technical amendment to reference to section 1421f(a) of this title to reflect renumbering of corresponding section of original act.

CHAPTER 32—MARINE SANCTUARIES

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§ 1431. Findings, purposes, and policies

(a) Findings

The Congress finds that—

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some cases international, significance;

(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation, research, and management;

(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

(6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations.

(b) Purposes and policies

The purposes and policies of this chapter are—

(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.¹

(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the re-

¹ So in original. The period probably should be a semicolon.

sources of these marine areas not prohibited pursuant to other authorities;

(6) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) to create models of, and incentives for, ways to conserve and manage these areas;

(8) to cooperate with global programs encouraging conservation of marine resources; and

(9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(Pub. L. 92-532, title III, §301, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-332, §1, Aug. 29, 1980, 94 Stat. 1057; Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2296; Pub. L. 102-587, title II, §2101, Nov. 4, 1992, 106 Stat. 5039.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-587, §2101(a)(1), inserted “, and in some cases international,” after “national”.

Subsec. (a)(4). Pub. L. 102-587, §2101(a)(2), inserted “, research,” after “conservation” and struck out “and” at end.

Subsec. (a)(6). Pub. L. 102-587, §2101(a)(3), (4), added par. (6).

Subsec. (b). Pub. L. 102-587, §2101(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The purposes and policies of this chapter are—

“(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

“(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas that will complement existing regulatory authorities;

“(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

“(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

“(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.”

1984—Pub. L. 98-498 amended section generally, substituting provisions relating to Congressional declaration of findings, purposes and policies for provisions defining “Secretary” and “State”. See section 1432 of this title.

1980—Pub. L. 96-332 inserted provisions defining “State”.

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102-587 provided that: “This Act [see Tables for classification] may be cited as the ‘Oceans Act of 1992’.”

Section 2001 of title II of Pub. L. 102-587 provided that: “This title [enacting section 1445a of this title, amending this section and sections 1432 to 1437, 1440, 1442 to 1444, 1452 to 1456b, and 1458 to 1462 of this title, enacting provisions set out as notes under this section and sections 1433, 1442, and 1445 of this title, and amending provisions set out as a note under section 1433 of this title] may be cited as the ‘National Marine Sanctuaries Program Amendments Act of 1992’.”

SHORT TITLE OF 1984 AMENDMENT

Section 101 of title I of Pub. L. 98-498 provided that: “This title [enacting sections 1435 to 1439 of this title and amending this section and sections 1432 to 1434 of this title] may be cited as the ‘Marine Sanctuaries Amendments of 1984’.”

SHORT TITLE

Section 316 of Pub. L. 92-532, as added by Pub. L. 102-587, title II, §2112, Nov. 4, 1992, 106 Stat. 5047, provided that: “This title [probably means title III of Pub. L. 92-532, which enacted this chapter, see Codification note set out under section 1445a of this title] may be cited as ‘The National Marine Sanctuaries Act’.”

CONGRESSIONAL FINDINGS, POLICY, AND DECLARATION OF PURPOSE

For statement of Congressional findings, policy, and declaration of purpose of Pub. L. 92-532 which enacted this chapter and chapter 27 of Title 33, Navigation and Navigable Waters, see section 1401 of Title 33.

ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

For provisions relating to environmental effects abroad of major federal actions, see Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42.

§ 1432. Definitions

As used in this chapter, the term—

(1) “draft management plan” means the plan described in section 1434(a)(1)(C)(v) of this title;

(2) “Magnuson Act” means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) “marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;

(4) “Secretary” means the Secretary of Commerce;

(5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(6) “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

(B) the cost of damage assessments under section 1443(b)(2) of this title; and

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources.¹

(7) “response costs” means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury; and²

(8) “sanctuary resource” means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary; and

(9) “exclusive economic zone” means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.].

(Pub. L. 92-532, title III, §302, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-332, §2, Aug. 29, 1980, 94 Stat. 1057; Pub. L. 97-375, title II, §202(a), Dec. 21, 1982, 96 Stat. 1822; Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2297; Pub. L. 100-627, title II, §204(b), Nov. 7, 1988, 102 Stat. 3217; Pub. L. 102-587, title II, §2102, Nov. 4, 1992, 106 Stat. 5040.)

REFERENCES IN TEXT

The Magnuson Fishery Conservation and Management Act, referred to in pars. (2) and (9), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

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.

¹ So in original. The comma probably should be a semicolon.

² So in original. The word “and” probably should not appear.

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

Section 210 of title II of Pub. L. 100-627 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

Section 3 of Pub. L. 92-532, 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”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1443 of this title.

§ 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—

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

(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) of this section, 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 applicable 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; and

(I) the socioeconomic effects of sanctuary designation.

(2) Consultation

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

(A) the Committee on Merchant Marine and Fisheries 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 Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

(3) Resource assessment report

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.

(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.)

AMENDMENTS

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

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.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred

Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

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.

Fagatele Bay National Marine Sanctuary.—51 F.R. 15878, Apr. 29, 1986; 15 C.F.R. part 922, subpart J.

Florida Keys National Marine Sanctuary.—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.

Gray's Reef National Marine Sanctuary.—46 F.R. 7942, Jan. 26, 1981; 15 C.F.R. part 922, subpart I.

Hawaiian Islands Humpback Whale National Marine Sanctuary.—Pub. L. 102-587, title II, subtitle C, §§2301-2307, Nov. 4, 1992, 106 Stat. 5055-5059.

Key Largo National Marine Sanctuary.—41 F.R. 2379, Jan. 16, 1976; 48 F.R. 55118, Dec. 9, 1983; 15 C.F.R. part 929.

Looe Key National Marine Sanctuary.—46 F.R. 7949, Jan. 26, 1981; 15 C.F.R. part 937.

MONITOR 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.

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.

Point Reyes-Farallon Islands [also known as Gulf of the Farallones] National Marine Sanctuary.—46 F.R. 7936, Jan. 26, 1981; 15 C.F.R. part 922, subpart H.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1434 of this title.

§ 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) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate documents, including an executive summary, consisting of—

(i) the terms of the proposed designation;

(ii) the basis of the findings made under section 1433(a) of this title with respect to the area;

(iii) an assessment of the considerations under section 1433(b)(1) of this title;

(iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

(vii) the draft environmental impact statement;

(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine 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.); and

(ix) the proposed regulations referred to in subparagraph (A).

(2) Environmental impact statement

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.

(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 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) of this section, the Committee on Merchant Marine and Fisheries 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) of this section. The designation (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 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

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

- (i) continuity of session is broken only by an adjournment of Congress sine die; and
- (ii) 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.

(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 con-

stitutional 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.

(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.

(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 shall revise the management plan

and regulations as necessary to fulfill the purposes and policies of this chapter.

(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.)

REFERENCES IN TEXT

The Submerged Lands Act, referred to in subsec. (a)(1)(C)(viii), 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.

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.

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

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).

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1433, 1435 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 treat-

ties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(1) generally recognized principles of international law;

(2) an agreement between the United States and the foreign state of which the person is a citizen; or

(3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) Negotiations

The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(c) International cooperation

The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this chapter and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

(Pub. L. 92-532, title III, §305, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2302; amended Pub. L. 102-587, title II, §2105, Nov. 4, 1992, 106 Stat. 5043.)

AMENDMENTS

1992—Pub. L. 102-587, §2105(b), substituted "international negotiations and cooperation" for "and international negotiations" in section catchline.

Subsec. (a). Pub. L. 102-587, §2105(a)(1), substituted "This chapter and the regulations" for "The regulations" and inserted "or be enforced against" after "apply to".

Subsec. (c). Pub. L. 102-587, §2105(a)(2), added subsec. (c).

INTERNATIONAL COOPERATION

For direction that the Secretary of State seek effective international action and cooperation through the development of appropriate international rules and regulations in support of the policy of this chapter and chapter 27 of Title 33, Navigation and Navigable Waters, see section 1419 of Title 33.

§ 1436. Prohibited activities

It is unlawful to—

(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

(2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

(3) interfere with the enforcement of this chapter; or

(4) violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.

(Pub. L. 92-532, title III, §306, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2302;

amended Pub. L. 102-587, title II, §2106, Nov. 4, 1992, 106 Stat. 5043.)

AMENDMENTS

1992—Pub. L. 102-587 amended section generally. Prior to amendment, section read as follows: “The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this chapter.”

§ 1437. Enforcement

(a) In general

The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.

(b) Powers of authorized officers

Any person who is authorized to enforce this chapter may—

- (1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;
- (2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;
- (3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;
- (4) execute any warrant or other process issued by any court of competent jurisdiction; and
- (5) exercise any other lawful authority.

(c) Civil penalties

(1) Civil penalty

Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) Notice

No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) In rem jurisdiction

A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(4) Review of civil penalty

Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

(5) Collection of penalties

If any person fails to pay an assessment of a civil penalty under this section after it has be-

come a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) Compromise or other action by Secretary

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(d) Forfeiture

(1) In general

Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off.

(2) Application of the customs laws

The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.

(3) Disposal of sanctuary resources

Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) Presumption

For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a regulation or permit issued under this chapter.

(e) Payment of storage, care, and other costs

(1) Expenditures

(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.

(B) Amounts received under this section for forfeitures and costs imposed under paragraph

(2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and

(iii) manage and improve any other national marine sanctuary.

(2) Liability for costs

Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(f) Subpoenas

In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

(g) Use of resources of State and other Federal agencies

The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(h) Coast Guard authority not limited

Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.

(i) Injunctive relief

If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 1443 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such

a case to order such relief as the public interest and the equities of the case may require.

(j) Area of application and enforceability

The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

(Pub. L. 92-532, title III, §307, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2302; amended Pub. L. 100-627, title II, §207, Nov. 7, 1988, 102 Stat. 3219; Pub. L. 102-587, title II, §2107(a)-(c), (e), Nov. 4, 1992, 106 Stat. 5043, 5044.)

REFERENCES IN TEXT

Section 9607(f)(1) of title 42, referred to in subsec. (e)(1)(A), was in the original "section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act", and was translated as meaning section 107(f)(1) of Pub. L. 96-510, known as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, to reflect the probable intent of Congress.

Presidential Proclamation 5928 of December 27, 1988, referred to in subsec. (j), is set out as a note under section 1331 of Title 43, Public Lands.

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102-587, §2107(a)(1), substituted "\$100,000" for "\$50,000".

Subsec. (c)(3). Pub. L. 102-587, §2107(a)(2), struck out "and may be proceeded against in any district court of the United States having jurisdiction" after "assessed for such violation" and inserted at end "Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel."

Subsec. (d)(1). Pub. L. 102-587, §2107(b), inserted at end "The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off."

Subsec. (e)(1). Pub. L. 102-587, §2107(c), added par. (1) and struck out former par. (1) which read as follows: "IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

"(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

"(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or of any regulation or permit issued under this chapter."

Subsec. (j). Pub. L. 102-587, §2107(e), added subsec. (j).

1988—Pub. L. 100-627 amended section generally, substituting provisions consisting of subssecs. (a) to (i) relating to enforcement activities in general, powers of authorized officers, civil penalties, forfeiture, payment of storage, care, and other costs, subpoenas, use of resources of State and other Federal agencies, Coast Guard authority, and injunctive relief for former provisions consisting of subssecs. (a) to (c) relating to enforcement activities in general, civil penalties, and jurisdiction.

STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

Pub. L. 102-241, §51, Dec. 19, 1991, 105 Stat. 2227, directed Secretary of Transportation and Secretary of Commerce, not later than one year after Dec. 19, 1991, to submit to Congress a joint report describing methods by which Coast Guard enforcement efforts under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.) could be enhanced and coordinated with those of the National Oceanic and Atmospheric Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1441 of this title.

§ 1438. Repealed. Pub. L. 100-627, title II, § 203(1), Nov. 7, 1988, 102 Stat. 3214

Section, Pub. L. 92-532, title III, §308, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2303, authorized appropriations for fiscal years 1985 to 1988.

§ 1439. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Pub. L. 92-532, title III, §308, formerly §309, as added Pub. L. 98-498, title I, §102, Oct. 19, 1984, 98 Stat. 2303; renumbered §308, Pub. L. 100-627, title II, §203(2), Nov. 7, 1988, 102 Stat. 3214.)

REFERENCES IN TEXT

This Act, referred to in text, 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.

PRIOR PROVISIONS

A prior section 308 of Pub. L. 92-532 was classified to section 1438 of this title, prior to repeal by section 203(1) of Pub. L. 100-627.

§ 1440. Research, monitoring, and education

(a) In general

The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this chapter.

(b) Promotion and coordination of sanctuary use

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.

(Pub. L. 92-532, title III, §309, as added Pub. L. 100-627, title II, §203(3), Nov. 7, 1988, 102 Stat. 3214; amended Pub. L. 102-587, title II, §2108, Nov. 4, 1992, 106 Stat. 5045.)

PRIOR PROVISIONS

A prior section 309 of Pub. L. 92-532 was renumbered section 308 and is classified to section 1439 of this title.

AMENDMENTS

1992—Pub. L. 102-587 amended section generally. Prior to amendment, section read as follows: “The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

“(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

“(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.”

§ 1441. Special use permits

(a) Issuance of permits

The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

(1) to establish conditions of access to and use of any sanctuary resource; or

(2) to promote public use and understanding of a sanctuary resource.

(b) Permit terms

A permit issued under this section—

(1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

(4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

(c) Fees

(1) Assessment and collection

The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) Amount

The amount of a fee under this subsection shall be equal to the sum of—

(A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

(B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

(C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.

(3) Use of fees

Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

(A) for issuing and administering permits under this section; and

(B) for expenses of designating and managing national marine sanctuaries.

(d) Violations

Upon violation of a term or condition of a permit issued under this section, the Secretary may—

(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

(2) assess a civil penalty in accordance with section 1437 of this title; or

(3) both.

(e) Reports

Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(f) Fishing

Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

(Pub. L. 92-532, title III, §310, as added Pub. L. 100-627, title II, §203(3), Nov. 7, 1988, 102 Stat. 3214.)

§ 1442. Cooperative agreements, donations, and acquisitions

(a) Cooperative agreements, grants, and other agreements

The Secretary may enter into cooperative agreements, financial agreements, grants, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this chapter.

(b) Authorization to solicit donations

The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this chapter.

(c) Donations

The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(d) Acquisitions

The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this chapter.

(Pub. L. 92-532, title III, §311, as added Pub. L. 100-627, title II, §203(3), Nov. 7, 1988, 102 Stat. 3215; amended Pub. L. 102-587, title II, §2109, Nov. 4, 1992, 106 Stat. 5045.)

AMENDMENTS

1992—Pub. L. 102-587 amended section generally. Prior to amendment, section read as follows:

“(a) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with any nonprofit organization—

“(1) to aid and promote interpretive, historical, scientific, and educational activities; and

“(2) for the solicitation of private donations for the support of such activities.

“(b) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter.”

ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES

Section 2204 of title II of Pub. L. 102-587 provided that:

“(a) IN GENERAL.—Beginning on the date of enactment of this title [Nov. 4, 1992], the Secretary shall conduct a 2-year pilot project to enhance funding for designation and management of national marine sanctuaries.

“(b) PROJECT.—The project shall consist of—

“(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;

“(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

“(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

“(4) the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

“(5) the establishment and collection by the Secretary of fees from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

“(6) the retention of any fees assessed under paragraph (5) by the Secretary in an interest-bearing revolving fund; and

“(7) the expenditure of any fees and any interest in the fund established under paragraph (6), without appropriation, by the Secretary to designate and manage national marine sanctuaries.

“(c) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (b).

“(d) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (b), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

“(e) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (b) is deemed to be the property of the United States.

“(f) PROHIBITED ACTIVITIES.—(1) It is unlawful for any person—

“(A) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

“(B) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

“(C) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a fee to the Secretary; and

“(D) to violate any regulation promulgated by the Secretary under this section.

“(2) Violation of this subsection shall be considered a violation of title III of the Marine Protection, Re-

search, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

“(g) REPORT.—No later than 30 months after the date of enactment of this Act [Nov. 4, 1992], the Secretary shall submit a report on the pilot project to Congress regarding the success of the program in providing additional funds for management and operation of national marine sanctuaries.

“(h) DEFINITIONS.—In this section—

“(1) the term ‘national marine sanctuary’ or ‘national marine sanctuaries’ means a national marine sanctuary or sanctuaries designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), or by other law in accordance with title III of the Marine Protection, Research, and Sanctuaries Act of 1972;

“(2) the term ‘official sponsor’ means any person designated by the Secretary who is authorized to manufacture, reproduce, or use any symbol created, adopted, and published in the Federal Register under this section for a fee paid to the Secretary; and

“(3) the term ‘Secretary’ means the Secretary of Commerce.”

§ 1443. Destruction or loss of, or injury to, sanctuary resources

(a) Liability

(1) Liability to United States

Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

(B) interest on that amount calculated in the manner described under section 2705 of title 33.

(2) Liability in rem

Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

(3) Defenses

A person is not liable under this subsection if that person establishes that—

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was negligible.

(4) Limits to liability

Nothing in sections 181 to 188¹ of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person under this chapter.

(b) Response actions and damage assessment

(1) Response actions

The Secretary may undertake or authorize all necessary actions to prevent or minimize

the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) Damage assessment

The Secretary shall assess damages to sanctuary resources in accordance with section 1432(6) of this title.

(c) Civil actions for response costs and damages

The Attorney General, upon request of the Secretary, may commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) of this section for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

(d) Use of recovered amounts

Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42, and used as follows:

(1) Response costs and damage assessments

Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

(2) Restoration, replacement, management, and improvement

Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

(B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

(C) to manage and improve any other national marine sanctuary.

(3) Federal-State coordination

Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.

(Pub. L. 92-532, title III, §312, as added Pub. L. 100-627, title II, §204(a), Nov. 7, 1988, 102 Stat. 3215; amended Pub. L. 102-587, title II, §§2107(d), 2110, Nov. 4, 1992, 106 Stat. 5044, 5045.)

REFERENCES IN TEXT

Sections 181 to 188 of title 46, Appendix, referred to in subsec. (a)(4), was in the original a reference to sections 4281 to 4289 of the Revised Statutes of the United States. Section 4288 of the Revised Statutes was classified to section 175 of former Title 46, Shipping, and was repealed by act Oct. 9, 1940, ch. 777, §7, 54 Stat. 1028.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-587, §2110(a), amended par. (1) generally. Prior to amendment, par. (1) read as

¹ See References in Text note below.

follows: "IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury."

Subsec. (a)(2). Pub. L. 102-587, §2110(b), inserted at end "The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel."

Subsec. (a)(4). Pub. L. 102-587, §2110(c), added par. (4).

Subsec. (b)(1). Pub. L. 102-587, §2110(d), which directed the amendment of par. (1) "by inserting 'or authorize' of 'undertake'", was executed by inserting "or authorize" after "undertake", to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 102-587, §2107(d)(1), struck out "and civil penalties under section 1437 of this title" after "Secretary under this section".

Subsec. (d)(3), (4). Pub. L. 102-587, §§2107(d)(2), 2110(e), redesignated par. (4) as (3), inserted "the court decree or settlement agreement and" after "in accordance with", and struck out former par. (3) which read as follows: "Amounts recovered under section 1437 of this title in the form of civil penalties shall be used by the Secretary in accordance with section 1437(e) of this title and paragraphs (2)(B) and (C) of this subsection."

EFFECTIVE DATE

Section 204(c) of Pub. L. 100-627 provided that: "Amounts in the form of damages received by the United States after November 30, 1986, for destruction or loss of, or injury to, a sanctuary resource (as that term is defined in section 302(8) of the Act [16 U.S.C. 1432(8)] (as amended by this Act)) shall be subject to section 312 of the Act [16 U.S.C. 1443] (as amended by this Act)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1437 of this title.

§ 1444. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this chapter the following—

- (1) \$8,000,000 for fiscal year 1993;
- (2) \$12,500,000 for fiscal year 1994;
- (3) \$15,000,000 for fiscal year 1995; and
- (4) \$20,000,000 for fiscal year 1996.

(Pub. L. 92-532, title III, §313, as added Pub. L. 100-627, title II, §208, Nov. 7, 1988, 102 Stat. 3221; amended Pub. L. 101-605, §10(a), Nov. 16, 1990, 104 Stat. 3095; Pub. L. 102-587, title II, §2111, Nov. 4, 1992, 106 Stat. 5046.)

AMENDMENTS

1992—Pub. L. 102-587 amended section generally, substituting provisions relating to authorization of appropriations for fiscal years 1993 to 1996 to carry out this chapter for provisions relating to authorization of appropriations for fiscal years 1989 to 1992 to carry out general administration, management of national marine sanctuaries and site review and analysis of national marine sanctuaries of this chapter.

1990—Par. (2)(C). Pub. L. 101-605 substituted "\$4,000,000" for "\$3,000,000".

§ 1445. U.S.S. Monitor artifacts and materials

(a) Congressional policy

In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suit-

able display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

(b) Interpretation and display of artifacts

(1) Submission of plan

The Secretary shall, within six months after November 7, 1988, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

(2) Contents of plan

The plan submitted under subsection (a) of this section shall, at a minimum, contain—

(A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;

(B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;

(C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and

(D) a draft cooperative agreement with the State of North Carolina to implement the plan.

(c) Disclaimer

This section shall not affect the following:

(1) Responsibilities of Secretary

The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

(2) Authority of Secretary

The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

(Pub. L. 92-532, title III, §314, as added Pub. L. 100-627, title II, §208, Nov. 7, 1988, 102 Stat. 3222.)

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

GRAVEYARD OF THE ATLANTIC ARTIFACTS

Pub. L. 102-587, title II, §2201, Nov. 4, 1992, 106 Stat. 5047, provided that:

"(a) ACQUISITION OF SPACE.—Pursuant to section 314 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1445) and consistent with the Cooperative Agreement entered into in October, 1989, between the National Oceanic and Atmospheric Administration and the Mariner's Museum of Newport News, Virginia, the Secretary of Commerce shall make a grant for the acquisition of space in Hatteras Village, North Carolina, for—

“(1) the display and interpretation of artifacts recovered from the area of the Atlantic Ocean adjacent to North Carolina generally known as the Graveyard of the Atlantic, including artifacts recovered from the Monitor National Marine Sanctuary; and

“(2) administration and operations of the Monitor National Marine Sanctuary.

“(b) AUTHORIZATION.—To carry out the responsibilities of the Secretary of Commerce under this section, there are authorized to be appropriated to the Secretary of Commerce a total of \$800,000 for fiscal years 1993 and 1994, to remain available until expended.

“(c) FEDERAL SHARE.—Not more than two-thirds of the cost of space acquired under this section may be paid with amounts provided pursuant to this section.”

§ 1445a. Advisory Councils

(a) Establishment

The Secretary may establish one or more advisory councils (in this section referred to as an “Advisory Council”) to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) Membership

Members of the Advisory Councils may be appointed from among—

(1) persons employed by Federal or State agencies with expertise in management of natural resources;

(2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and

(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) Limits on membership

For sanctuaries designated after November 4, 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) Staffing and assistance

The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) Public participation and procedural matters

The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

(2) Emergency meetings may be held at the call of the chairman or presiding officer.

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register.

(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

(Pub. L. 92-532, title III, §315, as added Pub. L. 102-587, title II, §2112, Nov. 4, 1992, 106 Stat. 5046.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section 2112 of Pub. L. 102-587, which provided that the “Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended by adding at the end” new sections 315 [this section] and 316 [set out as a Short Title note under section 1431 of this title], was executed by adding sections 315 and 316 to the end of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, to reflect the probable intent of Congress.

CHAPTER 32A—REGIONAL MARINE RESEARCH PROGRAMS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 2803.

§ 1447. Purposes

The purpose of this chapter is to establish regional research programs, under effective Federal oversight, to—

(1) set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region; and

(2) carry out such research through grants and improved coordination.

(Pub. L. 92-532, title IV, §401, as added Pub. L. 101-593, title III, §301, Nov. 16, 1990, 104 Stat. 2963.)

§ 1447a. Definitions

As used in this chapter, the term—

(1) “Board” means any Regional Marine Research board¹ established pursuant to section 1447b(a) of this title;

(2) “Federal agency” means any department, agency, or other instrumentality of the Federal Government, including any independent

¹ So in original. Probably should be capitalized.