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110TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPORT
110–557

# GULF OF THE FARALLONES AND CORDELL BANK NATIONAL MARINE SANCTUARIES BOUNDARY MODIFICATION AND PROTECTION ACT

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MARCH 31, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 1187]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1187) to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act".

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) The Gulf of the Farallones extends approximately 100 miles along the coast of Marin and Sonoma counties of northern California. It includes approximately one-half of California's nesting seabirds, rich benthic marine life on hard-rock substrate, prolific fisheries, and substantial concentrations of resident and seasonally migratory marine mammals.

(2) Cordell Bank is adjacent to the Gulf of the Farallones and is a submerged island with spectacular, unique, and nationally significant marine environments.

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(3) These marine environments have national and international significance, exceed the biological productivity of tropical rain forests, and support high levels of biological diversity.

(4) These biological communities are easily susceptible to damage from human activities, and must be properly conserved for themselves and to protect the economic viability of their contribution to national and regional economies.

(5) The Gulf of Farallones and Cordell Bank include some of the Nation's richest fishing grounds, supporting important commercial and recreational fisheries. These fisheries are regulated by State and Federal fishery agencies and are supported and fostered through protection of the waters and habitats of Gulf of the Farallones National Marine Sanctuary and Cordell Bank National Marine Sanctuary.

(6) The report of the Commission on Ocean Policy established by Public Law 106–256 calls for comprehensive protection for the most productive ocean environments and recommends that they be managed as ecosystems.

(7) New scientific discoveries by the National Marine Sanctuary Program support comprehensive protection for these marine environments by broadening the geographic scope of the existing Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

(8) Cordell Bank is at the nexus of an ocean upwelling system, which produces the highest biomass concentrations on the west coast of the United States.

**SEC. 3. POLICY AND PURPOSE.**

(a) POLICY.—It is the policy of the United States in this Act to protect and preserve living and other resources of the Gulf of the Farallones and Cordell Bank marine environments.

(b) PURPOSE.—The purposes of this Act are the following:

(1) To extend the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary to the areas described in section 5.

(2) To strengthen the protections that apply in the Sanctuaries.

(3) To educate and interpret for the public the ecological value and national importance of those marine environments.

(4) To manage human uses of the Sanctuaries under this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

(c) EFFECT ON FISHING ACTIVITIES.—Nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) MARICULTURE.—The term "mariculture" means the propagation or rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose.

(2) CORDELL BANK NMS.—The term "Cordell Bank NMS" means the Cordell Bank National Marine Sanctuary.

(3) FARALLONES NMS.—The term "Farallones NMS" means the Gulf of the Farallones National Marine Sanctuary.

(4) SANCTUARIES.—The term "Sanctuaries" means the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, as expanded by section 5.

(5) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

**SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY ADJUSTMENTS.**

(a) GULF OF THE FARALLONES.—

(1) BOUNDARY ADJUSTMENT.—The areas described in paragraph (2) are added to the existing Gulf of the Farallones National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREAS INCLUDED.—

(A) IN GENERAL.—The areas referred to in paragraph (1) consist of the following:

(i) All submerged lands and waters, including living marine and other resources within and on those lands and waters, from the mean high water line to the boundary described in subparagraph (B).

(ii) The submerged lands and waters, including living marine and other resources within those waters, within the approximately two-square-nautical-mile portion of the Cordell Bank NMS (as in effect immediately before the enactment of this Act) that is located south of the

area that is added to Cordell Bank NMS by subsection (b)(2), which are transferred to the Farallones NMS from the Cordell Bank NMS.

(B) BOUNDARY DESCRIBED.—The boundary referred to in subparagraph (A)(i) commences from the mean high water line (MHWL) at 39.00000 degrees north in a westward direction approximately 29 nautical miles (nm) to 39.00000 north, 124.33333 west. The boundary then extends in a southeasterly direction to 38.30000 degrees north, 124.00000 degrees west, approximately 44 nm westward of Bodega Head. The boundary then extends eastward to the most northeastern corner of the expanded Cordell Bank NMS at 38.30000 north, 123.20000 degrees west, approximately 6 nm miles westward of Bodega Head. The boundary then extends in a southeasterly direction to 38.26500 degrees north, 123.18166 degrees west at the northwestern most point of the current Gulf of the Farallones Boundary. The boundary then follows the current northern Gulf of the Farallones NMS boundary in a northeasterly direction to the MHWL near Bodega Head. The boundary then follows the MHWL in a northeasterly direction to the commencement point at the intersection of the MHWL and 39.00000 north. Coordinates listed in this subparagraph are based on the North American Datum 1983 and the geographic projection.

(b) CORDELL BANK.—

(1) BOUNDARY ADJUSTMENT.—The area described in paragraph (2) is added to the existing Cordell Bank National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREA INCLUDED.—

(A) IN GENERAL.—The area referred to in paragraph (1) consists of all submerged lands and waters, including living marine and other resources within those waters, within the boundary described in subparagraph (B).

(B) BOUNDARY.—The boundary referred to in subparagraph (A) commences at the most northeastern point of the current Cordell Bank NMS boundary at 38.26500 degrees north, 123.18166 degrees west and extends northwestward to 38.30000 degrees north, 123.20000 degrees west, approximately 6 nautical miles (nm) west of Bodega Head. The boundary then extends westward to 38.30000 degrees north, 124.00000 degrees west, approximately 44 nautical miles west of Bodega Head. The boundary then turns southeastward and continues approximately 34 nautical miles to 37.76687 degrees north, 123.75142 degrees west, and then approximately 15 nm eastward to 37.76687 north, 123.42694 west at an intersection with the current Cordell Bank NMS boundary. The boundary then follows the current Cordell Bank NMS, which is coterminous with the current Gulf of the Farallones boundary, in a northeasterly and the northwesterly direction to its commencement point at 38.26500 degrees north, 123.18166 degrees west. Coordinates listed in this subparagraph are based on NAD83 Datum and the geographic projection.

(c) INCLUSION IN THE SYSTEM.—The areas included in the Sanctuaries under subsections (a) and (b) shall 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.

(d) UPDATED NOAA CHARTS.—The Secretary shall—

(1) produce updated National Oceanic and Atmospheric Administration nautical charts for the areas in which the Sanctuaries are located; and

(2) include on those nautical charts the boundaries of the Sanctuaries, as revised by this Act.

(e) BOUNDARY ADJUSTMENTS.—In producing revised nautical charts as directed by subsection (d) and in describing the boundaries in regulations issued by the Secretary, the Secretary may make technical modifications to the boundaries described in this section for clarity and ease of identification, as appropriate.

**SEC. 6. PROHIBITION OF OIL AND GAS LEASING AND PERMITTING.**

No lease or permit may be issued that authorizes exploration, development, production, or transporting by pipeline of minerals or hydrocarbons within the Sanctuaries.

**SEC. 7. MANAGEMENT PLANS AND REGULATIONS.**

(a) INTERIM PLAN.—The Secretary shall complete an interim supplemental management plan for the Sanctuaries by not later than 24 months after the date of enactment of this Act, that focuses on management in the areas added to the Sanctuaries under this Act. The Secretary shall ensure that the supplemental plan does not weaken existing resource protections.

(b) REVISED PLANS.—The Secretary shall issue a revised comprehensive management plan for the Sanctuaries during the first management review initiated after

the date of the enactment of this Act under section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) for the Sanctuaries, and issue such final regulations as may be necessary.

(c) APPLICATION OF EXISTING REGULATIONS.—The regulations for the Gulf of the Farallones National Marine Sanctuary (15 C.F.R. 922, subpart H) and the Cordell Bank National Marine Sanctuary (15 C.F.R. 922, subpart K), including any changes made as a result of a joint management plan review for the Sanctuaries conducted pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)), shall apply to the areas added to each Sanctuary, respectively, under section 5 until the Secretary modifies such regulations in accordance with subsection (d) of this section.

(d) REVISED REGULATIONS.—

(1) IN GENERAL.—The Secretary shall carry out an assessment of necessary revisions to the regulations for the Sanctuaries in a manner that ensures the protection of the resources of the Sanctuaries consistent with the purposes and policies of the National Marine Sanctuaries Act and the goals and objectives for the new areas added to each sanctuary under section 5 of this Act. The assessment and any corresponding regulatory changes shall be complete within 24 months of the date of enactment of this Act.

(2) REGULATION OF SPECIFIC ACTIVITIES.—In revising the regulations for the Sanctuaries pursuant to this subsection, the Secretary shall consider appropriate regulations for the following activities:

(A) The deposit or release of introduced species.

(B) The alteration of stream and river drainage into the Sanctuaries.

(C) Mariculture operations in the Sanctuaries.

(3) CONSIDERATIONS.—In revising the regulations for the Sanctuaries pursuant to this subsection, the Secretary shall consider exempting from further regulation under the National Marine Sanctuaries Act and this Act discharges that are permitted under a National Pollution Discharge Elimination System permit in effect on the date of enactment of this Act, or under a new or renewed National Pollution Discharge Elimination System permit that does not increase pollution in the Sanctuaries and that originates—

(A) in the Russian River Watershed outside the boundaries of the Gulf of the Farallones National Marine Sanctuary; or

(B) from the Bodega Marine Laboratory.

(e) CONTENTS OF PLANS.—Revisions to each comprehensive management plan under this section shall, in addition to matters required under section 304(a)(2) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(A)(2))—

(1) facilitate all appropriate public and private uses of the national marine sanctuary to which each respective plan applies consistent with the primary objective of sanctuary resource protection;

(2) establish temporal and geographical zoning if necessary to ensure protection of sanctuary resources;

(3) identify priority needs for research that will—

(A) improve management of the Sanctuaries;

(B) diminish threats to the health of the ecosystems in the Sanctuaries; or

(C) fulfill both of subparagraphs (A) and (B);

(4) establish a long-term ecological monitoring program and database, including the development and implementation of a resource information system to disseminate information on the Sanctuaries' ecosystem, history, culture, and management;

(5) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);

(6) ensure coordination and cooperation between sanctuary superintendents and other Federal, State, and local authorities with jurisdiction over areas within or adjacent to the Sanctuaries to deal with issues affecting the Sanctuaries, including surface water run-off, stream and river drainages, and navigation;

(7) in the case of revisions to the plan for the Farallones NMS, promote cooperation with farmers and ranchers operating in the watersheds adjacent to the Farallones NMS and establish voluntary best management practices programs;

(8) promote cooperative and educational programs with fishing vessel operators and crews operating in the waters of the Sanctuaries, and, whenever possible, include individuals who engage in fishing and their vessels in cooperative research, assessment, and monitoring programs and educational programs to

promote sustainable fisheries, conservation of resources, and navigational safety; and

(9) promote education and public awareness, among users of the Sanctuaries, about the need for marine resource conservation and safe navigation and marine transportation.

(f) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in the revision of the comprehensive management plans and relevant regulations under this section.

**SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary—

(1) $3,000,000 to carry out this Act for each of fiscal years 2009 through 2013, other than for construction and acquisition projects; and

(2) $3,500,000 for fiscal year 2009 and such sums as may be necessary for each of fiscal years 2010 through 2013 for construction and acquisition projects related to the Sanctuaries.

Amend the title so as to read:

A bill to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes.

## PURPOSE OF THE BILL

The purpose of H.R. 1187 is to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

The National Marine Sanctuary System was authorized as Title III of the National Marine, Protection, Research and Sanctuaries Act of 1972.[1] This law required the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, to identify, designate, and manage marine sites based on conservational, ecological, recreational, historical, aesthetic, scientific, or educational value within significant national ocean and Great Lake waters. The first sanctuary was designated in 1975 off the Outer Banks of North Carolina to protect the wreck of the *U.S.S. Monitor*, a famous Civil War ironclad battleship. Since then, 12 other marine sanctuaries and one national marine monument have been added to the System.[2] In general, most sanctuaries prohibit extractive commercial activities, with the exception of commercial and recreational fishing.[3] The average annual operating budget for the Sanctuary System over the past three fiscal years is $45 million.

The Gulf of the Farallones NMS was designated in 1981. The sanctuary encompasses an area of 1,255 square miles off the California coastline west of San Francisco. The sanctuary protects both offshore regions and nearshore estuaries.[4] Approximately 966

[1] Public Law 92–532 (16 U.S.C. 1431 et seq.).

[2] In order of subsequent designation, the other marine sanctuaries are Key Largo, Channel Islands, Looe Key (both Key Largo and Looe Key were incorporated into the much larger Florida Keys Sanctuary in 1990), Gulf of the Farallones, Grays Reef, Fagatale Bay, Cordell Bank, Flower Garden Banks, Monterey Bay, Stellwagen Bank, Hawaiian Island Humpback Whale, Olympic Coast and Thunder Bay. The Papahanaumokuakea Marine National Monument, designated by presidential proclamation in 2006, protects the marine resources of the Northwest Hawaiian Islands.

[3] Section 304(a)(5) of the Sanctuaries Act allows Regional Fisheries Management Councils to develop fishing regulations to be incorporated into a sanctuary management plan. The Secretary of Commerce has the discretion to reject these draft regulations if they are incompatible with the purpose of the sanctuary.

[4] These estuaries include Bodega Bay, Tomales Bay, Bolinas Lagoon, the Estero de San Antonio and Estero Americano.

square miles of state waters are within the existing sanctuary boundaries. Also included in the sanctuary is Farallones National Wildlife Refuge—basically the Farallone Islands themselves. The refuge is managed by the U.S. Fish and Wildlife Service. This sanctuary is best known for abundant marine mammal and seabird populations and for behavioral studies of great white sharks.

The Cordell Bank NMS was designated in 1989. The sanctuary lies adjacent to the northwest boundary of the Gulf of the Farallones NMS and 21 miles west of the Point Reyes lighthouse. This sanctuary, which straddles the continental shelf, covers 526 square miles. The sanctuary protects one of the most biologically productive upwelling areas off the Pacific Coast which is vital to resident and migratory marine life. Until 1995, this sanctuary was managed jointly with the Gulf of the Farallones NMS. All three Central California sanctuaries are in the process of completing a joint management plan review.[5] A final management plan is tentatively scheduled to be released by the end of this year or early 2008. Neither revised management plan for either sanctuary recommended alterations to the existing boundaries.

As introduced, H.R. 1187 would expand the Gulf of the Farallones and Cordell Bank NMS to protect and preserve an additional 1,739 square nautical miles of the marine environment due north and west of the existing sanctuaries. These additions would enable the two sanctuaries to protect virtually the entire upwelling region.[6] The legislation, as introduced, also would prohibit:

- Leasing, exploration, development, production, or transporting by pipeline of minerals or hydrocarbons;
- Aquaculture (with exceptions and including the Monterey Bay NMS); and
- Discharges of materials, substances, or introduced species or a harmful change in salinity, subject to limitation.

The bill explicitly states that it does not alter any existing authorities governing the conduct and location of fishing activities. The bill also directs NOAA to develop an interim management plan, to develop a final management plan and regulations, and to consider the feasibility of designating a new sanctuary for the areas added.

## COMMITTEE ACTION

H.R. 1187 was introduced on February 16, 2007 by Congresswoman Woolsey (D–CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans. On October 24, 2007, the Subcommittee on Fisheries, Wildlife and Oceans held a hearing on the bill.

On February 13, 2008, the Subcommittee met to mark up the bill. Chairwoman Bordallo (D–GU) offered an amendment in the nature of a substitute to correct errors in boundary coordinates;

[5] As required under section 304(e), each sanctuary must complete every 5 years a public review and evaluation of its management plan. NOAA selected to initiate these reviews simultaneously due to overlapping issues, to optimize administrative efficiencies and to reduce overall cost per review.

[6] Upwelling brings cold, nutrient-rich waters to the surface, supporting phytoplankton blooms. These blooms are the energy base for large animal populations higher in the food chain, including fish, marine mammals, and seabirds. Coastal upwelling regions account for only one percent of the ocean surface, but they contribute to roughly 20 percent of the world's fish catch.

strike all prohibitions except for mineral and hydrocarbon activities; clarify and streamline the administrative process and timetable for development of interim and final management plans and regulations; and strike the requirement to consider a new sanctuary as required under the National Marine Sanctuaries Act. It was adopted by unanimous consent. The bill was then recommended to the Full Committee by unanimous consent.

On March 12, 2008, the Full Natural Resources Committee met to consider the bill. Congressman Wittman (R–VA) offered an amendment to place commercial and sport fishing activities within the Sanctuaries exclusively under the jurisdiction of the Pacific Fishery Management Council. It was not adopted by a roll call vote of 13 to 22, as follows:

**COMMITTEE ON NATURAL RESOURCES**
U.S. House of Representatives
110th Congress

**Date:** March 12, 2008 **Convened:** 11:39 **Adjourned:** 2:35

**Meeting on:** **HR 1187**: Amendment to the Committee Print offered by Mr. Wittman, was NOT AGREED TO by a roll call vote of 13 Yeas and 22 Nays.

✓ Recorded Vote Vote # 1 Total: Yeas: **13** Nays: **22**

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|---|---|---|---|---|---|---|---|
| Mr. Rahall, WV | | ✓ | | *Mr. Gohmert, TX* | | | |
| *Mr. Young, AK* | | | | Mrs. Bordallo, GUAM | | ✓ | |
| Mr. Miller, CA | | | | *Mr. Cole, OK* | | | |
| *Mr. Saxton, NJ* | | | | Mr. Costa, CA | | ✓ | |
| Mr. Markey, MA | | | | *Mr. Bishop, UT* | ✓ | | |
| *Mr. Gallegly, CA* | | | | Mr. Boren, OK | | ✓ | |
| Mr. Kildee, MI | | ✓ | | *Mr. Shuster, PA* | ✓ | | |
| *Mr. Duncan, TN* | | | | Mr. Sarbanes, MD | | ✓ | |
| Mr. DeFazio, OR | | ✓ | | *Mr. Sali, ID* | ✓ | | |
| *Mr. Gilchrest, MD* | | | | Mr. Hinchey, NY | | ✓ | |
| Mr. Faleomavaega, AS | | ✓ | | *Mr. Lamborn, CO* | ✓ | | |
| *Mr. Cannon, UT* | ✓ | | | Mr. Kennedy, RI | | | |
| Mr. Abercrombie, HI | | ✓ | | *Ms. Fallin, OK* | ✓ | | |
| *Mr. Tancredo, CO* | | | | Mr. Kind, WI | | ✓ | |
| Mr. Ortiz, TX | | ✓ | | *Mr. Adrian Smith, NE* | ✓ | | |
| *Mr. Flake, AZ* | ✓ | | | Mrs. Capps, CA | | ✓ | |
| Mr. Pallone, NJ | | | | *Mr. Wittman, VA* | ✓ | | |
| *Mr. Pearce, NM* | ✓ | | | Mr. Inslee, WA | | ✓ | |
| Mrs. Christensen, VI | | ✓ | | *Vacancy* | | | |
| *Mr. Brown, SC* | ✓ | | | Mr. Mark Udall, CO | | | |
| Mrs. Napolitano, CA | | ✓ | | Mr. Baca, CA | | ✓ | |
| *Mr. Fortuño, PR* | ✓ | | | Ms. Solis, CA | | ✓ | |
| Mr. Holt, NJ | | ✓ | | Ms. Herseth Sandlin, SD | | ✓ | |
| *Mrs. McMorris Rodgers, WA* | ✓ | | | Mr. Shuler, NC | | ✓ | |
| Mr. Grijalva, AZ | | ✓ | | | | | |
| | | | | | | | |
| | | | | **Total** | **13** | **22** | |

Markups - 1/3 to meet (16), 25 to report
March 27, 2008 (2:36pm)

The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section cites this Act as the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.

*Section 2. Findings*

This section establishes that the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries have national and international significance as highly productive marine ecosystems, which calls for comprehensive protection.

*Section 3. Policy and purpose*

This section sets forth the purpose of this Act, which is to extend the boundaries of the Gulf of the Farallones and the Cordell Bank Marine Sanctuaries, to strengthen their protection, to educate the public of their value, and to manage human uses within their bounds. Additionally, this section states that this Act does not intend to alter any existing authorities over fishing activities.

*Section 4. Definitions*

This section defines key terms included within the text of the proposed legislation

*Section 5. National Marine Sanctuary boundary adjustments*

This section delineates the adjusted boundaries of the Gulf of the Farallones and the Cordell Bank Marine Sanctuaries and includes these expansions as managed areas under the National Marine Sanctuary System. This section also directs the National Oceanic and Atmospheric Administration to update nautical charts accordingly.

*Section 6. Prohibition of oil and gas leasing and permitting*

This section prohibits leases or permits from being authorized for the exploration, development, production, or transportation by pipeline of minerals or hydrocarbons within the Sanctuaries.

*Section 7. Management plans and regulations*

This section directs the Secretary of Commerce to complete an interim and a comprehensive management plan to manage the Sanctuaries under this Act. This section also states that existing regulations apply to these Sanctuaries, but necessary revisions should be assessed.

*Section 8. Authorization of appropriations*

This section authorizes appropriations in the amount of $3 million annually from 2009 to 2013 and $3.5 million for fiscal year 2009 for construction and acquisition projects related to the Sanctuaries.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 as well as Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1187—Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*

Summary: H.R. 1187 would expand the boundaries of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, both of which are located off the coast of northern California. The bill would authorize additional funding for the two marine sanctuaries, which are managed by the National Oceanic and Atmospheric Administration (NOAA).

Assuming appropriation of the amounts specified by the bill for sanctuary management or estimated to be necessary for authorized construction and acquisition activities, CBO estimates that implementing H.R. 1187 would cost $20 million over the 2009–2013 period. Enacting the bill would have no effect on revenues or direct spending.

H.R. 1187 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 1187 would impose private-sector mandates, as defined in UMRA, by prohibiting or restricting certain commercial and recreational activities in the areas added to the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. Based on information from NOAA, CBO estimates that the cost of the mandates would fall below the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1187 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | |
|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | |
| Additional Sanctuary Operating Costs:[1] | | | | | |
| Authorization Level | 3 | 3 | 3 | 3 | 3 |
| Estimated Outlays | 3 | 3 | 3 | 3 | 3 |
| Vessel Acquisition and Construction: | | | | | |
| Authorization/Estimated Authorization Level | 4 | 1 | 0 | 0 | 0 |
| Estimated Outlays | 0 | 2 | 2 | 1 | 0 |
| Total Spending Under H.R. 1187: | | | | | |
| Authorization/Estimated Authorization Level | 7 | 4 | 3 | 3 | 3 |
| Estimated Outlays | 3 | 5 | 5 | 4 | 3 |

[1] Average annual appropriations to manage the two marine sanctuaries at their current size total about $2 million.

Basis of estimate: For this estimate, CBO assumes that H.R. 1187 will be enacted by the end of fiscal year 2008 and that the amounts specifically authorized or estimated to be necessary will be appropriated for each year. The specified authorization level includes $3 million for each of fiscal years 2009 through 2013 to manage the areas added to the two sanctuaries and $4 million for 2009 to construct or acquire an additional vessel needed to administer them.

The bill also would authorize the appropriation of whatever amounts are necessary for construction and acquisition for 2010 through 2013. Based on information provided by NOAA, we estimate that an additional $1 million would be appropriated for 2010 under this authority to complete the acquisition of the new vessel, which is estimated to cost about $5 million. We estimate that no additional amounts would be required for construction after 2010. Estimated outlays are based on historical spending patterns for NOAA programs and also reflect the assumption that NOAA would not be able to start building or acquiring a new vessel until it receives full funding for the project in 2010.

Estimated impact on state, local, and tribal governments: H.R. 1187 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private-sector: H.R. 1187 would extend current regulations and any subsequent modifications to the areas added to the sanctuaries by the bill. Some of those regulations would impose mandates, as defined in UMRA, by prohibiting or restricting certain commercial and recreational activities that could injure sanctuary resources within the added areas. Based on infor-

mation from NOAA, CBO estimates that the cost of complying with the mandates would be small and would fall below the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Neil Hood; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1187 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

## DISSENTING VIEWS—H.R. 1187, GULF OF THE FARALLONES AND CORDELL BANK NATIONAL MARINE SANCTUARIES BOUNDARY MODIFICATION AND PROTECTION ACT

H.R. 1187, Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act, would add approximately 1,200 square miles and almost 100 miles of the California coastline to two existing National Marine Sanctuaries—the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. This expansion would almost double the size of the two sanctuaries with no formal public input on the expansion or the management regime that this legislation would impose on the new areas. This addition would bring the total of area under the four sanctuaries off California to almost 10,000 square miles.

While the National Oceanic and Atmospheric Administration (NOAA) began the scoping process for changes to the management of the existing sanctuary areas in 2001 and has been conducting public comment on those changes, the expansion of the sanctuaries was not considered because it was "very complicated" and would "require a lot of effort and analysis and talking to the public." This legislation ignores the complexity of the expansion and ignores the need for public comment on any expansion of the sanctuaries—both of which could have been addressed by NOAA through the existing statutory process.

The legislation imposes a new management regime for the expanded boundary without public comment. While significant public comment was gathered on the management regime for the existing sanctuary areas, no public comment was requested on how these new management rules would affect the expanded areas. The legislation imposes the regulations until new regulations can be determined. The current process would allow for new regulations to be imposed after public comment, but this legislation flips the process on its head and puts the new regulations in place before the public comment.

This legislation short circuits the public process for both the expansion of the two sanctuaries and the new rules for managing the resources within the expanded areas. All of the provisions of this legislation could and should be accomplished through the existing process.

Additionally, H.R. 1187 ignores the statutory moratorium on new designations that was enacted due to concerns about funding levels. Congress imposed this moratorium because of concerns that the National Marine Sanctuary system would grow without the necessary growth in the funding levels. H.R. 1187 would almost double the size of two sanctuaries and establish a new requirement for NOAA to initiate a public process on new management measures for the expanded areas. NOAA estimates that the cost of managing the new areas would add an additional $2 to $3 million per

year for management and the costs of initiating a public process on the management regime would impose an additional $4 to $5 million over three years. At a time when the funding levels for the National Marine Sanctuary Program have fluctuated and costs for the new Papahānaumokuākea Marine National Monument have been added to the National Marine Sanctuary Program, without additional appropriations, the entire sanctuary program will suffer as a result of this legislation.

H.R. 1187, in addition to expanding the size of the sanctuaries, will put more area of the Federal Outer Continental Shelf off limits to any oil or natural gas production despite the current energy crisis. This legislation will continue this Congress' efforts to further restrict access to the Nation's energy resources and will ultimately require even further increases of imported fossil fuels.

This bill would impose a Congressional prohibition on any exploration or development of any hydrocarbon—including natural gas—and prohibit the transportation by pipeline of any hydrocarbon. The four National Marine Sanctuaries off California—with this expansion—will now cover approximately 33 percent of the California coastline and include almost 10,000 square miles. At a time when the Nation is facing an energy crisis, additional barriers to developing the Nation's potential natural gas reserves is irresponsible.

The National Marine Sanctuary Program has enjoyed popular support for many years. One of the reasons for this popularity was that the program allowed multiple uses of the offshore areas included within the program. The experience the commercial and recreational fishing community has had in other sanctuaries off the California coast has made them leery of any increased Federal designations in the Federal waters off California. Fishermen have seen their opportunities to fish in the waters of the sanctuaries off California diminished with little or no scientific basis. Despite the fact that neither of these sanctuaries was established to protect fisheries, fishermen remain concerned that this legislation will add an additional 1,200 square miles to the sanctuaries and impose new fishery management restrictions to these expanded areas without the necessary public comment. Action by Congress to expand sanctuary boundaries and impose new management regimes by statute rather than through a public process does nothing to calm their concerns.

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