

109TH CONGRESS
1ST SESSION

S. 880

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2005

Mrs. BOXER (for herself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gulf of the Farallones
5 and Cordell Bank National Marine Sanctuaries Boundary
6 Modification and Protection Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) The Gulf of the Farallones extends approxi-
2 mately 100 miles along the coast of Marin and
3 Sonoma counties of northern California. It includes
4 approximately one-half of California's nesting
5 seabirds, rich benthic marine life on hard-rock sub-
6 strate, prolific fisheries, and substantial concentra-
7 tions of resident and seasonally migratory marine
8 mammals.

9 (2) Cordell Bank is adjacent to the Gulf of the
10 Farallones and is a submerged island with spectac-
11 ular, unique, and nationally significant marine envi-
12 ronments.

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

17 (4) These biological communities are easily sus-
18 ceptible to damage from human activities, and must
19 be properly conserved for themselves and to protect
20 the economic viability of their contribution to na-
21 tional and regional economies.

22 (5) The Gulf of Farallones and Cordell Bank
23 include some of the Nation's richest fishing grounds,
24 supporting important commercial and recreational
25 fisheries. These fisheries are regulated by State and

1 Federal fishery agencies and are supported and fos-
2 tered through protection of the waters and habitats
3 of Gulf of the Farallones National Marine Sanctuary
4 and Cordell Bank National Marine Sanctuary.

5 (6) The report of the Commission on Ocean
6 Policy established by the Oceans Act of 2000 (Public
7 Law 106–256; 33 U.S.C. 857–19 note) calls for
8 comprehensive protection for the most productive
9 ocean environments and recommends that such envi-
10 ronments be managed as ecosystems.

11 (7) New scientific discoveries by the National
12 Marine Sanctuary Program support comprehensive
13 protection for these marine environments by broad-
14 ening the geographic scope of the existing Gulf of
15 the Farallones National Marine Sanctuary and the
16 Cordell Bank National Marine Sanctuary.

17 (8) Cordell Bank is at the nexus of an ocean
18 upwelling system, which produces the highest bio-
19 mass concentrations on the west coast of the United
20 States.

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

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

1 (b) PURPOSE.—The purposes of this Act are the fol-
2 lowing:

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

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

9 (3) To educate and interpret for the public re-
10 garding those marine environments.

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

14 (c) EFFECT ON FISHING ACTIVITIES.—Nothing in
15 this Act is intended to alter any existing authorities re-
16 garding the conduct of fishing activities in the Sanc-
17 tuaries.

18 **SEC. 4. DEFINITIONS.**

19 In this Act:

20 (1) AQUACULTURE.—The term “aquaculture”
21 means the propagation or rearing of aquatic orga-
22 nisms in controlled or selected aquatic environments
23 for any commercial, recreational, or public purpose.

1 (2) CORDELL BANK NMS.—The term “Cordell
2 Bank NMS” means the Cordell Bank National Ma-
3 rine Sanctuary.

4 (3) FARALLONES NMS.—The term “Farallones
5 NMS” means the Gulf of the Farallones National
6 Marine Sanctuary.

7 (4) SANCTUARIES.—The term “Sanctuaries”
8 means the Gulf of the Farallones National Marine
9 Sanctuary and the Cordell Bank National Marine
10 Sanctuary, as expanded by section 5.

11 (5) SECRETARY.—The term “Secretary” means
12 the Secretary of Commerce.

13 (6) MEAN HIGHER HIGH WATER MARK.—The
14 term “mean higher high water mark” means the
15 arithmetic average of the elevations of the higher of
16 two high waters of a tidal day over a period of time
17 as determined by the National Oceanic and Atmos-
18 pheric Administration.

19 (7) PERSON.—The term “person” means any
20 private or public individual, corporation, partnership,
21 trust, institution, association, or any other public or
22 private entity, whether foreign or domestic, or any
23 officer, employee, agent, department, agency, or in-
24 strumentality of the Federal Government, of any

1 State, tribal, or local unit of government, or of any
2 foreign government.

3 **SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY AD-**
4 **JUSTMENTS.**

5 (a) GULF OF THE FARALLONES.—

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

11 (2) AREAS INCLUDED.—

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

14 (i) All submerged lands and waters,
15 including living marine and other resources
16 within and on those lands and waters,
17 from the mean higher high water mark to
18 the boundary described in subparagraph
19 (B).

20 (ii) The submerged lands and waters,
21 including living marine and other resources
22 within those waters, within the approxi-
23 mately two square nautical mile portion of
24 Cordell Bank NMS (as in effect imme-
25 diately before the enactment of this Act)

1 that is located south of the area that is
2 added to Cordell Bank NMS by subsection
3 (b)(2), which are transferred to the
4 Farallones NMS from the Cordell Bank
5 NMS.

6 (B) BOUNDARY DESCRIBED.—The bound-
7 ary referred to in subparagraph (A)(i) is the
8 line formed by connecting points in succession
9 beginning at Bodega Head' Southernmost Point
10 located at 38 degrees, 18 minutes north lati-
11 tude, 123 degrees, 6.5 minutes west longitude;
12 then in a northwesterly direction along the coast
13 to the mouth of the Gualala River at 38 de-
14 grees, 45 minutes north latitude, 123 degrees,
15 31.9 minutes west longitude; then west 21.7
16 nautical miles to 38 degrees, 45 minutes north
17 latitude, 124 degrees west longitude; then due
18 south 27 nautical miles to 38 degrees, 18 min-
19 utes north latitude, 124 degrees west longitude;
20 then 37.7 nautical miles east to 38 degrees, 18
21 minutes north latitude, 123 degrees, 12 minutes
22 west longitude; then to the shared boundary of
23 the Farallones NMS and Cordell Bank NMS
24 (as in effect immediately before the enactment
25 of this Act) at 38 degrees, 15.9 minutes north

1 latitude, 123 degrees, 10.9 minutes west lon-
2 gitude.

3 (b) CORDELL BANK.—

4 (1) BOUNDARY ADJUSTMENT.—The area de-
5 scribed in paragraph (2) is added to the existing
6 Cordell Bank National Marine Sanctuary described
7 in part 922.110 of title 15, Code of Federal Regula-
8 tions.

9 (2) AREA INCLUDED.—

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

15 (B) BOUNDARY.—The boundary referred
16 to in subparagraph (B) is the line formed by
17 connecting points in succession beginning at the
18 present most northeastern point of the Cordell
19 Bank NMS at 38 degrees, 15.9 minutes north
20 latitude, 123 degrees, 10.9 minutes west lon-
21 gitude; then to 38 degrees, 18 minutes north
22 latitude, 123 degrees, 12 minutes west lon-
23 gitude, which is 7 miles west of Bodega Head;
24 then to 38 degrees, 18 minutes north latitude,
25 123 degrees, 40 minutes west longitude, which

1 is 28.6 nautical miles west of Bodega Head;
 2 then due south 32 nautical miles to 37 degrees,
 3 50 minutes north latitude, 123 degrees, 40 min-
 4 utes west longitude; then 11.5 nautical miles
 5 east where it intersects with a boundary shared
 6 by Cordell Bank NMS and Farallones NMS at
 7 37 degrees, 50 minutes north latitude, 123 de-
 8 grees, 25.4 minutes west longitude.

9 (c) INCLUSION IN THE SYSTEM.—The areas included
 10 in the Sanctuaries under subsections (a) and (b) of this
 11 section shall be managed as part of the National Marine
 12 Sanctuary System, established by section 301(c) of the
 13 National Marine Sanctuaries Act (16 U.S.C. 1431(c)), in
 14 accordance with that Act.

15 (d) UPDATED NOAA CHARTS.—The Secretary of
 16 Commerce shall—

17 (1) produce updated National Oceanic and At-
 18 mospheric Administration charts for the areas in
 19 which the Farallones NMS and Cordell Bank NMS
 20 are located; and

21 (2) include on such charts the boundaries of the
 22 sanctuaries, as revised by this Act.

23 **SEC. 6. PROHIBITION OF CERTAIN USES.**

24 (a) MINERAL AND HYDROCARBON LEASING, EXPLO-
 25 RATION, DEVELOPMENT, AND PRODUCTION.—No leasing,

1 exploration, development, production, or transporting by
2 pipeline of minerals or hydrocarbons shall be permitted
3 within the Sanctuaries.

4 (b) AQUACULTURE.—

5 (1) PROHIBITION.—It is unlawful for any per-
6 son to conduct aquaculture—

7 (A) in any area of the Sanctuaries; or

8 (B) within Monterey Bay National Marine
9 Sanctuary.

10 (2) EXISTING BIVALVE FARMING ALLOWED.—

11 The prohibition in paragraph (1) shall not apply to
12 persons conducting farming operations of bivalve
13 species that are in existence on the date of enact-
14 ment of this Act.

15 (3) REGULATIONS.—The Secretary shall issue
16 regulations that specify the operations referred to in
17 paragraph (2).

18 (c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

19 (1) PROHIBITIONS.—It is unlawful for any per-
20 son—

21 (A) to deposit or discharge any material or
22 substance of any kind within the Sanctuaries;

23 (B) to deposit or discharge any material or
24 substance of any kind that enters and injures
25 any sanctuary resource (as that term is defined

1 in the National Marine Sanctuaries Act (16
2 U.S.C. 1432)); or

3 (C) to deposit or discharge any invasive
4 species from a vessel in the Sanctuaries.

5 (2) CHANGES IN SALINITY.—No person shall
6 cause a change of salinity in the Sanctuaries that is
7 injurious to the marine ecosystem of the Sanc-
8 tuaries.

9 (3) LIMITATION ON APPLICABILITY.—Para-
10 graph (1) does not apply with respect to any dis-
11 charge—

12 (A) of fish, fish parts, and chumming ma-
13 terials resulting from, and while conducting
14 otherwise lawful, fishing activity;

15 (B) of food consumed onboard a vessel;

16 (C) of biodegradable effluents incidental to
17 vessel use and generated by an operable Type
18 I or II marine sanitation device as classified by
19 the United States Coast Guard, that is ap-
20 proved in accordance with section 312 of the
21 Federal Water Pollution Control Act (33 U.S.C.
22 1322) provided the vessel operator secures all
23 marine sanitation devices in a manner that pre-
24 vents discharge of untreated sewage from a
25 Type I or Type II Coast Guard-approved sani-

tation devices, except that this subparagraph does not apply with respect to a discharge from a cruise ship within the boundaries of either sanctuary;

(D) of biodegradable material resulting from deck wash down and vessel engine cooling water (excluding ballast water and oily wastes from bilge pumping), from a vessel;

(E) from vessel engine exhaust; or

(F) that—

(i) originates in the Russian River Watershed outside the boundaries of the Farallones NMS, as expanded by section 5;

(ii) originates from the Bodega Marine Laboratory; and

(iii) is permitted under a National Pollution Discharge Elimination System permit that is 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.

(d) CONSULTATION REQUIREMENT FOR CHANGES IN WATER FLOW.—Any Federal, State or local government agency that is responsible for significant alteration of

1 fresh water flow regimes that may affect the Sanctuaries
2 must consult with the Secretary prior to initiating such
3 change in order to ensure sanctuary resources are not in-
4 jured.

5 (e) PENALTIES AND ENFORCEMENT.—A violation of
6 this section shall be treated as a violation of section 306
7 of the Marine Protection, Research, and Sanctuaries Act
8 of 1972 (16 U.S.C. 1436).

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

10 (a) INTERIM PLAN.—The Secretary shall complete an
11 interim supplemental management plan for each of the
12 Sanctuaries by not later than 30 months after the date
13 of enactment of this Act, that focuses on management in
14 the areas added under this Act. These supplemental plans
15 shall not weaken existing resource protections.

16 (b) REVISED PLANS.—The Secretary shall issue a re-
17 vised comprehensive management plan for each of the
18 Sanctuaries during the next management review process
19 required by section 304 of the National Marine Sanc-
20 tuaries Act (16 U.S.C. 1434(e)) for the Sanctuaries, and
21 issue such final regulations as may be necessary.

22 (c) APPLICATION OF EXISTING REGULATIONS.—The
23 regulations for the Gulf of the Farallones National Marine
24 Sanctuary (15 C.F.R. 922, subpart H) and the Cordell
25 Bank National Marine Sanctuary (15 C.F.R. 922, subpart

1 K) shall apply to the areas added to the Sanctuaries under
2 section 5 until the Secretary modifies such regulations in
3 accordance with this section.

4 (d) PROCEDURES.—In developing the revisions under
5 this section, the Secretary shall follow the procedures spec-
6 ified in sections 303 and 304 of the Marine Protection,
7 Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433
8 and 1434), except those procedures requiring the delinea-
9 tion of national marine sanctuary boundaries and develop-
10 ment of a resource assessment report.

11 (e) CONTENTS OF PLANS.—Revisions to each com-
12 prehensive management plan under this section shall, in
13 addition to matters required under section 304(a)(2) of
14 the Marine Protection, Research and Sanctuaries Act of
15 1972 (16 U.S.C. 1434(A)(2))—

16 (1) facilitate all public and private uses of each
17 of the Sanctuaries consistent with the primary objec-
18 tive of sanctuary resource protection;

19 (2) establish temporal and geographical zoning
20 if necessary to ensure protection of sanctuary re-
21 sources;

22 (3) identify priority needs for research which
23 will—

24 (A) improve management of each of the
25 Sanctuaries;

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

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

5 (4) establish a long-term ecological monitoring
6 program and database, including the development
7 and implementation of a resource information sys-
8 tem to disseminate information on the Sanctuaries'
9 ecosystem, history, culture and management;

10 (5) identify alternative sources of funding need-
11 ed to fully implement the plan's provisions and sup-
12 plement appropriations under section 313 of the Ma-
13 rine Protection, Research, and Sanctuaries Act of
14 1972 (16 U.S.C. 1444);

15 (6) ensure coordination and cooperation be-
16 tween Sanctuary managers and other Federal, State,
17 and local authorities with jurisdiction within or adja-
18 cent to the Sanctuaries;

19 (7) in the case of revisions to the plan for the
20 Farallones NMS, promote cooperation with farmers
21 and ranchers operating in the watersheds adjacent
22 to the Gulf of the Farallones NMS and establish vol-
23 untary best practices programs for farming and
24 ranching;

1 (8) promote cooperative and educational pro-
2 grams with fishing vessel operators and crews oper-
3 ating in the waters of the Sanctuaries, and, when-
4 ever possible, include individuals who engage in fish-
5 ing and their vessels in cooperative research, assess-
6 ment, and monitoring programs of the education,
7 among users of the Sanctuaries, about conservation
8 and navigational safety and the conservation of
9 those resources; and

10 (9) promote education, among users of the
11 Sanctuaries, about conservation and navigation safe-
12 ty.

13 (f) PUBLIC PARTICIPATION.—The Secretary shall
14 provide for participation by the general public in the revi-
15 sion of the comprehensive management plans and regula-
16 tions under this section.

17 **SEC. 8. FEASIBILITY OF A NEW SANCTUARY DESIGNATION.**

18 (a) REVIEW AND RECOMMENDATION.—As part of the
19 first review, following the date of enactment of this Act,
20 of the Gulf of the Farallones National Marine Sanctuary
21 Management Plan pursuant to section 304(e) of the Na-
22 tional Marine Sanctuaries Act (16 U.S.C. 1434(e)), the
23 Secretary shall—

24 (1) conduct a review of the operations of the
25 Farallones NMS; and

1 (2) following not less than one public hearing
2 held in the area added to the Farallones NMS by
3 this Act and the receipt of public comment, deter-
4 mine whether that area shall be designated as a new
5 and separate National Marine Sanctuary.

6 (b) CONSIDERATIONS FOR DETERMINATION.—In
7 making the determination under subsection (a)(2), the
8 Secretary shall consider responsiveness to local needs, the
9 effectiveness of conservation, education and volunteer pro-
10 grams, and organizational efficiency.

11 (c) IMPLEMENTATION OF DETERMINATION.—If the
12 Secretary determines under subsection (b) to designate a
13 new national marine sanctuary, the Secretary shall imple-
14 ment measures to assure a smooth and effective transition
15 to a separate national marine sanctuary.

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