

110TH CONGRESS
2D SESSION

S. 2635

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

FEBRUARY 13, 2008

Mrs. BOXER (for herself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 The 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 Public Law 106–256 calls for
7 comprehensive protection for the most productive
8 ocean environments and recommends that they be
9 managed as ecosystems.

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

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

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

21 (a) POLICY.—It is the policy of the United States in
22 this Act to protect and preserve living and other resources
23 of the Gulf of the Farallones and Cordell Bank marine
24 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 and location of fishing activities in
17 the Sanctuaries.

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) PERSON.—The term “person” means—

14 (A) any private or public individual, cor-
15 poration, partnership, trust, institution, associa-
16 tion, or other entity, whether foreign or domes-
17 tic; or

18 (B) any officer, employee, agent, depart-
19 ment, agency, or instrumentality of—

20 (i) the Federal Government;

21 (ii) any State, tribal, or local unit of
22 government; or

23 (iii) any foreign government.

1 **SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY AD-**
2 **JUSTMENTS.**

3 (a) GULF OF THE FARALLONES.—

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

9 (2) AREAS INCLUDED.—

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

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

17 (ii) The submerged lands and waters,
18 including living marine and other resources
19 within those waters, within the approxi-
20 mately two-square-nautical-mile portion of
21 the Cordell Bank NMS (as in effect imme-
22 diately before the enactment of this Act)
23 that is located south of the area that is
24 added to Cordell Bank NMS by subsection
25 (b)(2), which are transferred to the

1 Farallones NMS from the Cordell Bank
2 NMS.

3 (B) BOUNDARY DESCRIBED.—The bound-
4 ary referred to in subparagraph (A)(i) com-
5 mences from the mean high water line
6 (MHWL) at 39.00000 degrees north in a west-
7 ward direction approximately 29 nautical miles
8 (nm) to 39.00000 north, 124.33333 west. The
9 boundary then extends in a southeasterly direc-
10 tion to 38.30000 degrees north, 124.00000 de-
11 grees west, approximately 44 nm westward of
12 Bodega Head. The boundary then extends east-
13 ward to the most northeastern corner of the ex-
14 panded Cordell Bank NMS at 38.30000 north,
15 123.20000 degrees west, approximately 6 nm
16 miles westward of Bodega Head. The boundary
17 then extends in a southeasterly direction to
18 38.26500 degrees north, 123.18166 degrees
19 west at the northwestern most point of the cur-
20 rent Gulf of the Farallones Boundary. The
21 boundary then follows the current northern
22 Gulf of the Farallones NMS boundary in a
23 northeasterly direction to the MHWL near
24 Bodega Head. The boundary then follows the
25 MHWL in a northeasterly direction to the com-

mencement 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

1 boundary then extends westward to 38.30000
2 degrees north, 123.66666 degrees west, ap-
3 proximately 28 nautical miles west of Bodega
4 Head. The boundary then turns southward and
5 continues approximately 32 nautical miles to
6 37.83333 degrees north, 123.66666 degrees
7 west, and then approximately 11 nm eastward
8 to 37.83333 north, 123.42333 west at an inter-
9 section with the current Gulf of the Farallones
10 NMS boundary. The boundary then follows the
11 current Cordell Bank NMS, which is cotermi-
12 nous with the current Gulf of the Farallones
13 boundary, in a northeasterly and the northwest-
14 erly direction to its commencement point at
15 38.26500 degrees north, 123.18166 degrees
16 west. Coordinates listed in this subparagraph
17 are based on NAD83 Datum and the geo-
18 graphic projection.

19 (c) INCLUSION IN THE SYSTEM.—The areas included
20 in the Sanctuaries under subsections (a) and (b) shall be
21 managed as part of the National Marine Sanctuary Sys-
22 tem, established by section 301(c) of the National Marine
23 Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with
24 that Act.

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

3 (1) produce updated National Oceanic and At-
4 mospheric Administration charts for the areas in
5 which are located the Farallones NMS and Cordell
6 Bank NMS; and

7 (2) include on those charts the boundaries of
8 such national marine sanctuaries, as revised by this
9 Act.

10 (e) BOUNDARY ADJUSTMENTS.—In producing re-
11 vised charts as directed by subsection (d) of this section
12 and in describing the boundaries in regulations issued by
13 the Secretary, the Secretary may make technical modifica-
14 tions to the boundaries described in this section for clarity
15 and ease of identification, as appropriate.

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

17 (a) MINERAL AND HYDROCARBON LEASING, EXPLO-
18 RATION, DEVELOPMENT, AND PRODUCTION.—No leasing,
19 exploration, development, production, or transporting by
20 pipeline of minerals or hydrocarbons shall be permitted
21 within the Sanctuaries.

22 (b) AQUACULTURE.—

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

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

1 (B) within Monterey Bay National Marine
2 Sanctuary.

3 (2) EXISTING BIVALVE FARMING ALLOWED.—

4 The prohibition in paragraph (1) shall not apply to
5 persons and their successors conducting bivalve
6 farming operations that are in existence on the date
7 of enactment of this Act, and shall not apply to their
8 successors in such operations.

9 (3) REGULATIONS.—The Secretary shall issue
10 regulations that specify the operations referred to in
11 paragraph (2).

12 (c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

13 (1) PROHIBITIONS.—It is unlawful for any per-
14 son—

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

17 (B) to deposit or discharge any material or
18 substance of any kind that enters and injures
19 any sanctuary resource (as that term is defined
20 in the National Marine Sanctuaries Act); or

21 (C) to deposit or discharge any introduced
22 species in the Sanctuaries.

23 (2) CHANGES IN SALINITY.—No person shall
24 cause a change of salinity in the Sanctuaries that in-

1 jures, causes the loss of, or destroys any sanctuary
2 resource.

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

6 (A) of fish, fish parts, and chumming ma-
7 terials resulting from, and while conducting
8 otherwise lawful, fishing activity;

9 (B) of biodegradable effluents incidental to
10 vessel use and generated by an operable Type
11 I or II marine sanitation device (as classified by
12 the Coast Guard) that is approved in accord-
13 ance with section 312 of the Federal Water Pol-
14 lution Control Act (33 U.S.C. 1322) if all ma-
15 rine sanitation devices on the vessel are secured
16 in a manner that prevents discharge of un-
17 treated sewage from a Type I or Type II Coast
18 Guard-approved sanitation devices on the ves-
19 sel, except that this subparagraph does not
20 apply with respect to a discharge from a cruise
21 ship within the boundaries of either of the
22 Sanctuaries;

23 (C) of biodegradable material resulting
24 from deck wash down from a vessel;

25 (D) from vessel engine exhaust; or

1 (E) that—

2 (i) originates in the Russian River
3 Watershed outside the boundaries of the
4 Gulf of the Farallones National Marine
5 Sanctuary;

6 (ii) originates from the Bodega Ma-
7 rine Laboratory; and

8 (iii) is permitted under a National
9 Pollution Discharge Elimination System
10 permit that is in effect on the date of en-
11 actment of this Act, or under a new or re-
12 newed National Pollution Discharge Elimi-
13 nation System permit that does not in-
14 crease pollution in the Sanctuaries.

15 (d) CONSULTATION REQUIREMENT FOR CHANGES IN
16 WATER FLOW.—Any Federal, State, or local government
17 agency that is responsible for significant alteration of
18 fresh water flow regimes that may affect the Sanctuaries
19 must consult with the Secretary prior to initiating such
20 change in order to ensure sanctuary resources are not in-
21 jured.

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

1 (f) SECRETARIAL AUTHORITY NOT LIMITED.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), nothing in this Act limits the authority
4 of the Secretary to prohibit, allow, or otherwise reg-
5 ulate the discharge of materials or other substances.

6 (2) LIMITATION WITH RESPECT TO DIS-
7 CHARGES.—The Secretary may only modify the reg-
8 ulation of those activities listed in subsection (c) to
9 further protection of sanctuary resources and quali-
10 ties.

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

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

19 (b) REVISED PLANS.—The Secretary shall issue a re-
20 vised comprehensive management plan for each of the
21 Sanctuaries during the first management review initiated
22 after the date of the enactment of this Act under section
23 304(e) of the National Marine Sanctuaries Act (16 U.S.C.
24 1434(e)) for each of the Sanctuaries, and issue such final
25 regulations as may be necessary.

1 (c) APPLICATION OF EXISTING REGULATIONS.—The
 2 regulations for the Gulf of the Farallones National Marine
 3 Sanctuary (15 C.F.R. 922, subpart H) and the Cordell
 4 Bank National Marine Sanctuary (15 C.F.R. 922, subpart
 5 K), respectively, shall apply to the areas added to the rel-
 6 evant Sanctuary under section 5 until the Secretary modi-
 7 fies such regulations in accordance with this section.

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

13 (1) facilitate all public and private uses of the
 14 national marine sanctuary to which the plan applies
 15 consistent with the primary objective of sanctuary
 16 resource protection;

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

20 (3) identify priority needs for research that
 21 will—

22 (A) improve management of the Sanc-
 23 tuaries;

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

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

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

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

13 (6) ensure coordination and cooperation be-
14 tween sanctuary superintendents and other Federal,
15 State, and local authorities with jurisdiction over
16 areas within or adjacent to the Sanctuaries to deal
17 with issues affecting the Sanctuaries, including
18 nonpoint discharges and navigation;

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 Farallones NMS and establish voluntary best
23 practices programs for farming and ranching;

24 (8) promote cooperative and educational pro-
25 grams with fishing vessel operators and crews oper-

1 ating in the waters of the Sanctuaries, and, when-
2 ever possible, include individuals who engage in fish-
3 ing and their vessels in cooperative research, assess-
4 ment, and monitoring programs and educational
5 programs to promote sustainable fisheries, conserva-
6 tion of resources, and navigational safety; and

7 (9) promote education, among users of the
8 Sanctuaries, about conservation and navigation safe-
9 ty.

10 (e) PUBLIC PARTICIPATION.—The Secretary shall
11 provide for participation by the general public in the revi-
12 sion of the comprehensive management plans and regula-
13 tions under this section.

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

15 (a) REVIEW AND RECOMMENDATION.—As part of the
16 first review initiated after the date of enactment of this
17 Act of the Gulf of the Farallones National Marine Sanc-
18 tuary Management Plan pursuant to section 304(e) of the
19 National Marine Sanctuaries Act (16 U.S.C. 1434(e)), the
20 Secretary shall—

21 (1) conduct a review of the operations of the
22 Farallones NMS; and

23 (2) following not less than one public hearing
24 held in Sonoma County, California, and the receipt
25 of public comment, determine whether the aea of the

1 Gulf of the Farallones National Marine Sanctuary
2 expanded by this Act shall be designated as a new
3 and separate national marine sanctuary.

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

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

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