

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 Sanetuary.

---

## 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:

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.

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 organ-  
22 isms in controlled or selected aquatic environments  
23 for any commercial, recreational, or public purpose.

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;

(ii) any State, tribal, or local unit of 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.

(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 com-

1 mencement point at the intersection of the  
2 MHWL and 39.00000 north. Coordinates listed  
3 in this subparagraph are based on the North  
4 American Datum 1983 and the geographic pro-  
5 jection.

6 (b) CORDELL BANK.—

12 (2) AREA INCLUDED.—

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

18 (B) BOUNDARY.—The boundary referred  
19 to in subparagraph (A) commences at the most  
20 northeastern point of the current Cordell Bank  
21 NMS boundary at 38.26500 degrees north,  
22 123.18166 degrees west and extends  
23 northwestward to 38.30000 degrees north,  
24 123.20000 degrees west, approximately 6 nau-  
25 tical 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

(B) within Monterey Bay National Marine  
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.

12 (c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

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.

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

(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.

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;

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

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

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.

