

*One Hundred Second Congress of the United States of America*

**AT THE SECOND SESSION**

Begun and held at the City of Washington on Friday, the third day of January,

one thousand nine hundred and ninety-two

An Act

To provide Congressional approval of a Governing International Fishery Agreement,

and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**Subtitle C--Hawaiian Islands Humpback Whale Sanctuary**

**SEC. 2301. SHORT TITLE.**

This subtitle may be cited as the 'Hawaiian Islands National Marine Sanctuary Act'.

**SEC. 2302. FINDINGS.**

The Congress finds the following:

- (1) Many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance and importance.
- (2) There are at present no ocean areas in the Hawaiian Islands designated as national marine sanctuaries or identified on the Department of Commerce's Site Evaluation List of sites to be investigated as potential candidates for designation as a national marine sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).
- (3) The Hawaiian Islands consist of eight major islands and 124 minor islands, with a total land area of 6,423 square miles and a general coastline of 750 miles.
- (4) The marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.
- (5) The Department of Commerce recently concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there is preliminary evidence of biological, cultural, and historical resources adjacent to Kahoolawe Island to merit further investigation for national marine sanctuary status.
- (6) The Department of Commerce also concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there are additional marine areas within the Hawaiian archipelago which merit further consideration for national marine sanctuary status and that the national marine sanctuary program could enhance marine resource protection in Hawaii.
- (7) The Hawaiian stock of the endangered humpback whale, the largest of the three North Pacific stocks, breed and calve within the waters of the main Hawaiian Islands.

(8) The marine areas surrounding the main Hawaiian Islands, which are essential breeding, calving, and nursing areas for the endangered humpback whale, are subject to damage and loss of their ecological integrity from a variety of disturbances.

(9) The Department of Commerce recently promulgated a humpback whale recovery plan which sets out a series of recommended goals and actions in order to increase the abundance of the endangered humpback whale.

(10) An announcement of certain Hawaiian waters frequented by humpback whales as an active candidate for marine sanctuary designation was published in the Federal Register on March 17, 1982 (47 FR 11544).

(11) The existing State and Federal regulatory and management programs applicable to the waters of the main Hawaiian Islands are inadequate to provide the kind of comprehensive and coordinated conservation and management of humpback whales and their habitat that is available under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(12) Authority is needed for comprehensive and coordinated conservation and management of humpback whales and their habitat that will complement existing Federal and State regulatory authorities.

(13) There is a need to support, promote, and coordinate scientific research on, and monitoring of, that portion of the marine environment essential to the survival of the humpback whale.

(14) Public education, awareness, understanding, appreciation, and wise use of the marine environment are fundamental to the protection and conservation of the humpback whale.

(15) The designation, as a national marine sanctuary, of the areas of the marine environment adjacent to the main Hawaiian Islands which are essential to the continued recovery of the humpback whale is necessary for the preservation and protection of this important national marine resource.

(16) The marine sanctuary designated for the conservation and management of humpback whales could be expanded to include other marine resources of national significance which are determined to exist within the sanctuary.

## **SEC. 2303. DEFINITIONS.**

In this subtitle, the following definitions apply:

(1) The term `adverse impact' means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

(2) The term `Sanctuary' means the Hawaiian Islands Humpback Whale National Marine Sanctuary designated under section 2305.

(3) The term `Secretary' means the Secretary of Commerce.

## **SEC. 2304. POLICY AND PURPOSES.**

(a) POLICY- It is the policy of the United States to protect and preserve humpback whales and their habitat within the Hawaiian Islands marine environment.

(b) PURPOSES- The purposes of this subtitle are--

(1) to protect humpback whales and their habitat in the area described in section 2305(b);

(2) to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) to manage such human uses of the Sanctuary consistent with this subtitle and title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act; and

(4) to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary designated in section 2305(a).

## **SEC. 2305. DESIGNATION OF SANCTUARY.**

(A) DESIGNATION- Subject to subsection (c), the area described in subsection (b) is designated as the Hawaiian Islands Humpback Whale National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1451 et seq.), as amended by this title.

(b) AREA INCLUDED- (1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward of the upper reaches of the wash of the waves on shore--

(A) to the one hundred fathom (one hundred and eighty-three meter) isobath adjoining the islands of Lanai, Maui, and Molokai, including Penguin Bank but excluding the area within 3 nautical miles of the upper reaches of the waves on the shore of Kahoolawe Island;

(B) to the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward; and

(C) to the one hundred fathom (one hundred and eighty-three meter) isobath adjoining the Kilauea National Wildlife Refuge on the island of Kauai.

(2)(A) On January 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island is designated a part of the Sanctuary, unless during the 3-month period immediately preceding January 1, 1996, the Secretary certifies in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives that the area is not suitable for inclusion in the Sanctuary. If such certification is made, it shall be accompanied by a written explanation of the Secretary's reasoning in support of the certification.

(B) After a certification of unsuitability is made under subparagraph (A), the Secretary shall annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to such congressional committees a report on that finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary on the 30th day after such report is submitted.

(C) Upon designation of the area under subparagraph (A) or (B), the area shall be managed as if it has been designated under section 2305, and the Secretary shall--

(i) publish a notice in the Federal Register announcing the designation and identifying the area; and

(ii) issue such regulations for the area as are necessary to fulfill the Secretary's responsibilities under this subtitle and title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(3) The Secretary shall generally identify and depict the Sanctuary on National Oceanic and Atmospheric Administration charts. Those charts shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration. The Secretary shall update the charts to reflect any boundary modification under subsection (d), and any additional designation under paragraph (2) of this subsection.

(c) EFFECT OF OBJECTION BY GOVERNOR- (1) If within 45 days after the date of the enactment of this title the Governor of Hawaii certifies to the Secretary that the designation (including the prospective additional designation under subsection (b)(2) of the area within 3 nautical miles of Kahoolawe Island) is unacceptable, the designation shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(2) If within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 2306 the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(3) If the Secretary considers that an action taken under paragraph (1) or (2) will affect the Sanctuary in a manner that the goals and objectives of this subtitle cannot be fulfilled, the Secretary may terminate the entire designation under subsection (a). At least thirty days prior to such termination, the Secretary shall submit written notification of the proposed termination to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(d) BOUNDARY MODIFICATIONS- No later than the date of issuance of the draft environmental impact statement for the Sanctuary under section 304(a)(1)(C)(vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a)(1)(C)(vii)), the Secretary, in consultation with the Governor of Hawaii, if appropriate, may make modifications to the boundaries of the Sanctuary as necessary to fulfill the purpose of this subtitle. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications.

## **SEC. 2306. COMPREHENSIVE MANAGEMENT PLAN.**

(a) PREPARATION OF PLAN- The Secretary, in consultation with interested persons and appropriate Federal, State, and local government authorities, shall develop and issue not later than 18 months after the date of enactment of this title a comprehensive management plan and implementing regulations to achieve the policy and purposes of this subtitle. In developing the plan and regulations, the Secretary shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434), as amended by this title. Such comprehensive management plan shall--

- (1) facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of the protection of humpback whales and their habitat;
- (2) set forth the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary and the State of Hawaii;
- (3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and their habitat;
- (4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 2307 of this subtitle and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);
- (5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary; and
- (6) promote education among users of the Sanctuary and the general public about conservation of humpback whales, their habitat, and other marine resources.

(b) PUBLIC PARTICIPATION- The Secretary shall provide for participation by the general public in development of the comprehensive management plan or any amendment thereto.

## **SEC. 2307. AUTHORIZATION OF APPROPRIATIONS.**

For carrying out this subtitle, there are authorized to be appropriated to the Secretary \$500,000 for fiscal year 1993 and \$300,000 for fiscal year 1994. Of the amounts appropriated under this section for fiscal year 1993--

(1) not less than \$50,000 shall be used by the Western Pacific Regional Team to evaluate potential national marine sanctuary sites for inclusion on the Department of Commerce's Site Evaluation List; and

(2) not less than \$50,000 shall be used to continue the investigation of biological, cultural, and historical resources adjacent to Kahoolawe Island.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.