

**Calendar No. 328**

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
112-149

GULF OF THE FARALLONES AND CORDELL  
BANK NATIONAL MARINE SANCTUARIES  
BOUNDARY MODIFICATION AND PROTEC-  
TION ACT

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 179



FEBRUARY 27, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

### REPORT

[To accompany S. 179]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 179) to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of S. 179, the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act, is to extend the boundaries of the Gulf of Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, strengthen the protections that apply to the Sanctuaries, educate the public regarding the ecological value and national importance of those marine environments, and manage uses of the Sanctuaries under the bill and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) (NMSA).

#### BACKGROUND AND NEEDS

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1052) (MPRSA). Title III of that Act authorizes the Secretary of Commerce (Secretary) to designate and permanently protect areas of national significance within the marine environment due to the importance of their conservation,

recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. NMSA (title II of the Oceans Act of 1992 (106 Stat. 5039)), amended the MPRSA process for considering Sanctuary designation standards and procedures. Currently, there are a total of 13 national marine sanctuaries and four national marine monuments. Sanctuaries vary in size from one square mile to 137,792 square miles.

NMSA also established the National Marine Sanctuary Program (NMSP), which is responsible for identifying, designating, and managing ocean and Great Lakes areas as national marine Sanctuaries. The NMSP has the authority to issue regulations for each sanctuary to specify the types of activities that can and cannot occur within sanctuary boundaries, which have the effect and enforceability of law. A designation document is prepared as part of a sanctuary's designation process. The designation document defines the area of the sanctuary, the characteristics of the area that give it value, and the types of activities that would be subject to regulation to protect those characteristics. The National Oceanic and Atmospheric Administration (NOAA) is authorized to both recover damages from responsible parties that injure sanctuary resources and to assess civil penalties for violations of sanctuary regulations. Most sanctuaries generally prohibit material discharges into the sanctuary, disturbance of seabed and cultural resources, and exploration and development of oil, gas, and minerals within the sanctuary.

NMSP also establishes management plans, develops conservation policy, issues permits, and undertakes strategic planning for each sanctuary. Each sanctuary has a community based Sanctuary Advisory Council. The Sanctuary Advisory Council is comprised of representatives from various user groups, including fishermen, Government agencies, and local businesses. The Sanctuary Advisory Council advises the sanctuary manager on the designation and/or operation of a national marine sanctuary.

Regulatory changes most often occur during a five-year Management Plan Review. During this process, the Sanctuary Advisory Council, working groups, and the public may identify issues that could lead to the decision to restrict or prohibit a certain activity in the sanctuary.

NMSA has been amended and reauthorized six times, most recently in 2000, which authorized funding through the end of fiscal year 2005. The 2000 reauthorization of NMSA included a provision that placed a limitation on the creation of new sanctuaries in an effort to address the impact of decreasing appropriations have on providing sufficient maintenance and operation capabilities for established sanctuaries. However, the limitation does not prevent the expansion of existing sanctuaries.

The existing 13 national marine sanctuaries and the four national marine monuments were added to the program through three different processes: (1) NMSP; (2) Congressional designation; and (3) Executive Order based on the Antiquities Act of 1906 (16 U.S.C. 431 et seq.). The majority of the national marine sanctuaries were added to the System through the NMSP process. However, the Hawaiian Islands Humpback Whale National Marine Sanctuary and the Stellwagen Bank National Marine Sanctuary were designated by provisions included in the Oceans Act of 1992

(106 Stat. 5039), and the Florida Keys National Marine Sanctuary and Protection Act (16 U.S.C. 1433 note), designated the Florida Keys National Marine Sanctuary, which enveloped the existing Key Largo and Looe Key National Marine Sanctuaries in 1996. To date, Congress also has enacted legislation to expand the boundaries of one existing sanctuary. The National Marine Sanctuaries Preservation Act (110 Stat. 3363), added Stetson Bank to the Flower Garden Banks National Marine Sanctuary.

The Gulf of the Farallones National Marine Sanctuary, established in 1981, is 948 square nautical miles off the coast of California just west of San Francisco and is part of the United Nations' Golden Gate Biosphere Reserve. It is a breeding ground for and home to harbor seals, elephant seals, harbor porpoises, Pacific white-sided dolphins, rockfish, and seabirds, including the Tufted Puffin. The Sanctuary constitutes part of the migration route of gray whales, contains a resident blue whale population, and serves as a feeding ground for both blue and humpback whale populations.

The Cordell Bank National Marine Sanctuary contains an offshore granitic bank 4.5 miles wide by 9.5 miles long and comprises 399 nautical square miles of the northern California coast. It is characterized by dynamic ocean conditions and complex undersea topography due to the prevailing California current that flows southward along the coast. The Sanctuary supports and is a feeding ground for many migratory marine mammals, seabirds, rockfish, and other fish species. Within the boundaries of both Sanctuaries, oil and gas development activities are prohibited. Fishing and aquaculture activities are not restricted by current regulations in either Sanctuary.

#### SUMMARY OF PROVISIONS

S. 179 would modify the existing Sanctuaries' boundaries to add approximately 1,521 square nautical miles to the Gulf of the Farallones National Marine Sanctuary and 354 square nautical miles to the Cordell Bank National Marine Sanctuary. The expansion would prohibit the leasing, exploration, development, production, or transporting by pipeline of minerals or hydrocarbons, as is currently done within the existing boundaries of the Sanctuaries.

The bill would direct the Secretary to complete: (1) a draft supplemental management plan for each Sanctuary not later than 24 months after the date of enactment of the Act; and (2) a revised comprehensive management plan for each Sanctuary at the conclusion of the first management review for the Sanctuaries initiated after the date of enactment of the legislation. The existing regulations for the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, including any changes made as a result of a joint management plan review for the Sanctuaries, would apply to the expansion areas. The bill would provide the Secretary with 24 months to assess and change any necessary regulations and would direct the Secretary to consider appropriate regulations in the Sanctuaries for the deposit or release of introduced species, and the alteration of stream and river drainage into the Sanctuaries.

The bill would authorize an appropriation of \$3 million for each fiscal year from 2012 through 2016 to carry out provisions of this

Act, other than construction and acquisition projects; and \$3.5 million for fiscal year 2012 and such sums as are necessary for each fiscal year from 2013 through 2016 for construction and acquisition projects related to the Sanctuaries.

#### LEGISLATIVE HISTORY

The Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act, S. 179, was introduced by Senator Boxer on January 25, 2011, with Senator Feinstein as an original cosponsor. On June 8, 2011, the Committee met in open Executive Session and, by a voice vote, ordered S. 179 reported without amendment.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 179—Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*

Summary: S. 179 would expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; both are located off the coast of northern California and are managed by the National Oceanic and Atmospheric Administration (NOAA).

Assuming appropriation of the amounts specified in the bill for sanctuary management and estimated to be necessary to acquire a new vessel to help manage the sanctuaries, CBO estimates that implementing S. 179 would cost \$20 million over the 2012–2016 period. Enacting the bill would have no effect on revenues or direct spending; therefore, pay-as-you-go procedures do not apply.

S. 179 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 179 would impose private-sector mandates, as defined in UMRA, by limiting 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 (\$142 million in 2011, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 179 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—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Additional Operating Costs:						
Authorization Level .....	3	3	3	3	3	15
Estimated Outlays .....	3	3	3	3	3	15

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
<b>Vessel Acquisition and Construction:</b>						
Estimated Authorization Level .....	4	1	0	0	0	5
Estimated Outlays .....	0	2	2	1	0	5
<b>Total Changes:</b>						
Estimated Authorization Level .....	7	4	3	3	3	20
Estimated Outlays .....	3	5	5	4	3	20

**Basis of Estimate:** For this estimate, CBO assumes that S. 179 will be enacted by the end of fiscal year 2011 and that the amounts specifically authorized or estimated to be necessary will be appropriated for each year. The bill would authorize the appropriation of \$3 million for each of fiscal years 2012 through 2016 to manage the areas added to the two sanctuaries. In recent years, about \$2 million has been appropriated annually for this purpose.

The bill also would authorize the appropriation of \$3.5 million for 2012 and whatever sums are necessary for 2013 through 2016 to acquire an additional vessel to manage the expanded sanctuaries. Based on information provided by NOAA, CBO estimates that an additional \$1 million would be needed in 2013 to complete the acquisition of the new vessel. Estimated outlays are based on historical spending patterns for NOAA programs and assume that NOAA would not acquire a new vessel until it received full funding for the project in 2013.

**Estimated impact on State, local, and tribal governments:** S. 179 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:** S. 179 would extend current regulations and any subsequent modifications to those regulations to the areas added to the sanctuaries by the bill. Some of those regulations would impose mandates, as defined in UMRA, by limiting certain commercial and recreational activities that could injure sanctuary resources. Based on information from NOAA about activities in the areas that would be added and existing regulations for the sanctuaries, CBO estimates that the cost of complying with the mandates would fall below the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Dubary Brea and Jeff LaFave; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

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

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

#### NUMBER OF PERSONS COVERED

The reported bill would not authorize any new regulations, and therefore, will not subject any individuals or businesses to new reg-

ulations. However, it would authorize extending current regulations to additional areas.

#### ECONOMIC IMPACT

The bill, as reported, may have a slight positive impact on the nation's economy by increasing tourism and expanding sanctuary designation for conservation of living marine resources. However, the bill would prohibit or restrict certain commercial activities that could injure Sanctuary resources, and therefore, may have a slight negative impact on the nation's economy.

#### PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens.

#### PAPERWORK

The reported bill would not increase paperwork requirements for the private sector. NOAA paperwork requirements would likely increase slightly as a result of the enhanced authorities and rule-making and reporting requirements provided in the bill.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title.*

This section would title the Act as the "Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act."

##### *Section 2. Findings.*

This section would describe the existing national marine sanctuaries and the national and international significance of the sanctuaries to the marine environment.

##### *Section 3. Policy and Purpose.*

This section would state that it is the policy of the United States to protect and preserve living and other resources of the Gulf of the Farallones and Cordell Bank marine environments by: (1) extending the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; (2) strengthening the protections that apply in the Sanctuaries; (3) providing for public education about the value of the Sanctuaries; and (4) managing uses of the Sanctuaries. The section also would state that nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries.

*Section 4. Definitions.*

This section would define several terms as they apply to this Act, including: (1) Mariculture; (2) Cordell Bank National Marine Sanctuary; (3) Farallones National Marine Sanctuary; (4) Sanctuaries; and (5) Secretary.

*Section 5. National Marine Sanctuary Boundary Adjustments.*

This section would expand the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary by describing the adjusted boundaries for each Sanctuary. The areas that would be included are 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. The section would provide for the expansion areas to be managed as part of the National Marine Sanctuary System. In addition, this section would direct the Secretary to produce updated NOAA nautical charts for the areas in which the Sanctuaries are located and include on those nautical charts the boundaries of the Sanctuaries, as revised by the Act.

*Section 6. Prohibition of Oil and Gas Leasing and Permitting.*

This section would prohibit the issuance of a lease or permit that authorizes exploration, development, production, or transportation by pipeline of minerals or hydrocarbons within the Sanctuaries.

*Section 7. Management Plans and Regulations.*

This section would direct the Secretary to complete a draft supplemental management plan for the Sanctuaries by no later than 24 months after the date of enactment of the Act that focuses on management in the areas added to the Sanctuaries under this Act. The draft plan could not weaken existing resource protections. In addition, the Secretary would issue a revised comprehensive management plan for the Sanctuaries during the first management review initiated after the date of enactment of this Act under section 304(e) of NMSA (16 U.S.C. 1434(e)), for the Sanctuaries, and issue such final regulations as may be necessary.

This section would permit 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 NMSA (16 U.S.C. 1434(e)), to apply to the areas added to each Sanctuary, respectively, until the Secretary modifies such regulations. The section would direct the Secretary to 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 NMSA and the goals and objectives for the new areas added to each Sanctuary under section 5 of this Act. This section would require the assessment and any corresponding regulatory changes be complete within 24 months of the date of enactment of this Act. In revising the regulations for the Sanctuaries pursuant to this subsection, the Secretary would be required to consider appropriate regulations for the following activities: the deposit or release of in-

roduced species, and the alteration of stream and river drainage into the Sanctuaries.

In addition, when revising the regulations for the Sanctuaries, the Secretary would consider exempting from further regulation under NMSA 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 in the Russian River Watershed outside the boundaries of the Gulf of the Farallones National Marine Sanctuary, or from the Bodega Marine Laboratory.

This section would require that revisions to each comprehensive management plan: (1) facilitate all appropriate public and private uses of the Sanctuaries 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; (4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 313 of MPRSA (16 U.S.C. 1444); (5) 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; (6) promote cooperation with farmers and ranchers operating in the watersheds adjacent to the Gulf of Farallones National Marine Sanctuary and establish voluntary best management practice programs; and (7) promote cooperative and educational programs with fishing vessel operators and crews operating in the waters of the Sanctuaries. The Secretary would provide for participation by the general public in the revision of the comprehensive management plans and relevant regulations under this section.

*Section 8. Authorization of Appropriations.*

This section would authorize an appropriation of \$3 million for each fiscal year from 2012 through 2016 to carry out provisions of this Act, other than construction and acquisition projects; and \$3.5 million for fiscal year 2012 and such sums as are necessary for each fiscal year from 2013 through 2016 for construction and acquisition projects related to the Sanctuaries.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.