

Appendix C

HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY ACT, SUBTITLE C OF PUBLIC LAW 102-587, AS AMENDED BY P.L. 104-283.

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 8 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)(1) and any area included under subsection (b)(2) are 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 100-fathom (183-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 100-fathom (183-meter) isobath adjoining the Kilauea National Wildlife Refuge on the island of Kauai.

(2) (A) Within 6 months after the date of receipt of a request in writing from the Kahoolawe Island Reserve Commission for inclusion within the Sanctuary of the area of the marine environment within 3 nautical miles of the mean high tide line of Kahoolawe Island (in this section referred to as the 'Kahoolawe Island waters'), the Secretary shall determine whether those waters may be suitable for inclusion in the Sanctuary.

(B) If the Secretary determines under subparagraph (A) that the Kahoolawe Island waters may be suitable for inclusion within the Sanctuary --

(i) the Secretary shall provide notice of that determination to the Governor of Hawaii; and

(ii) the Secretary shall prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion in accordance with this Act, the National Marine Sanctuaries Act, and the National Environmental Policy Act of 1969.

(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)(A) 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, the implementing regulations, 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.

(B) If the Secretary considers that an action under subparagraph (A) will affect the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate the designation under subsection (a). At least 30 days before that termination, the Secretary shall submit written notice of the termination to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2)(A) If, within 45 days after the Secretary issues the documents required under subsection (b)(2)(B)(ii), the Governor of Hawaii certifies to the Secretary that the inclusion of the Kahoolawe Island waters in the Sanctuary or any term of that inclusion is unacceptable--

(i) the inclusion or the term shall not take effect; and

(ii) subsection (b)(2) shall not apply during the 3-year period beginning on the date of that certification.

(B) If the Secretary considers that an action under subparagraph (A) regarding a term of the inclusion of the Kahoolawe Island waters will affect the inclusion or the administration of the Kahoolawe Island waters as part of the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate that inclusion.

(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 purposes 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. Limitation on User Fees.

(a) **Limitation:** The Secretary shall not institute any user fee under this Act or the National Marine Sanctuaries Act for any activity within the Hawaiian Islands National Marine Sanctuary or any use of the Sanctuary or its resources.

(b) **User Fee Defined:** In this section, the term 'user fee' does not include--

- (1) any fee authorized by section 310 of the National Marine Sanctuaries Act;
- (2) any gift or donation received under section 311 of that Act; and
- (3) any monetary or in-kind contributions under section 316 of that Act.

Sec. 2308. 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.