



NEW VISIONS FOR THE NATIONAL MARINE SANCTUARIES ACT

WASHINGTON DC

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SEMINAR SUMMARY

The Environmental Law Institute (ELI) presented a panel discussion on the National Marine Sanctuaries Act (NMSA), which brought together an array of speakers to talk about new visions for the Act and whether and what changes could be made to strengthen it.

SPEAKERS

- Steve Gittings, Science Coordinator, NOAA Office of National Marine Sanctuaries
- John Armor, Acting Chief, Conservation Policy and Planning Division, NOAA Office of National Marine Sanctuaries
- Bill Chandler, Vice President for Government Affairs, Marine Conservation Biology Institute
- Robert Hayes, General Counsel, Coastal Conservation Association

MODERATOR

- Jordan Diamond, Staff Attorney, Environmental Law Institute

Ms. Jordan Diamond introduced the panelists and the seminar topic. She described how the Act was created to protect marine areas of environmental, cultural, or historical significance, and to ensure their sustainable human use and enjoyment. There are 14 protected areas in the national sanctuary system, which are overseen by NOAA's Office of National Marine Sanctuaries. Ms. Diamond noted that although NMSA itself does not expire, its appropriated funding must be reauthorized. Reauthorization last occurred in 2000, although Congress has continued funding the program. Each opportunity for reauthorization triggers questions about whether NMSA could be strengthened, which are especially significant in light of existing efforts to develop a national ocean policy and framework for marine spatial planning.

Dr. Steve Gittings began by explaining that the National Marine Sanctuaries Program contains 13 designated marine sanctuaries and one marine national monument. These sanctuaries and monument encompass many different ecosystems and vary dramatically in size, habitat, and species diversity. Dr. Gittings described the various types of scientific research and monitoring activities that the Act requires, and emphasized the focus on ecosystem-level understandings and linkages with the education program. He noted that in 2000 the word "system" was added to the National Marine Sanctuary Program, a change that helped focus efforts on generating an understanding of the ecosystems at a higher level than simply the individual sanctuaries.

Dr. Gittings explained that the Act's primary aims are to improve the conservation, understanding, management, and wise and sustainable use of marine resources; to enhance public awareness, understanding, and appreciation of the marine environment; and to maintain for future generations the habitat (and ecological services) of the natural assemblage of living resources in these areas. Currently, there is only a macro-level understanding of marine sanctuaries. A more in-depth understanding of each individual sanctuary is needed, so that conservation science can then be applied to help protect these systems for years to come. Dr. Gittings defined conservation science as the combination of ecosystem characterization, robust monitoring, and applied research.

Dr. Gittings also emphasized the need to understand the natural variability of ocean systems, in order to determine if, for example, a shift in water temperature, species diversity, and/or ecosystems variance is normal. Much of the information concerning ocean changes over time can be found in historical accounts from newspapers and fishermen. Dr. Gittings noted that insufficient funds are budgeted for conservation science, and the majority of the monitoring relies on the volunteer work of others. With just a small increase in budget there could be more emphasis on ecosystem characterization and applied research to better protect our marine ecosystems.

Mr. John Armor described the origins of the 37-year-old Act. NMSA was enacted in 1972 under President Nixon. It has been reauthorized six times since its creation, in 1980, 1984, 1988, 1992, 1996, and most recently in 2000. Mr. Armor noted that these reauthorization periods are critical for keeping NMSA relevant and are the reason the Act has remained a central piece of legislation in the environmental field.

Mr. Armor explained how the Act changed during key reauthorization periods. In 1988 the enforcement provision was added to improve implementation. Before this provision was added, the Act had set regulations and penalties for failing to adhere to them, but provided little means of enforcing them. In 1992 authority was added for the creation of Advisory Councils to provide guidance and suggestions to the sanctuary program. This created an outlet for public participation. Finally, the 2000 amendments saw the establishment of the sanctuaries system, which helped create a management structure focused on the sanctuaries as a linked system rather than individual entities. Mr. Armor emphasized that it has been far too long since NMSA was last reevaluated, especially in light of the new scientific findings of the last nine years.

Mr. Armor highlighted that a key component of the Act, which should be amended, is the process for designating sanctuaries. It typically has taken five to seven years to designate a sanctuary, and since NMSA was enacted, Congress has created new legislation to create individual sanctuaries three times. Mr. Armor concluded by noting that NMSA is a constantly evolving statute, which is what keeps it applicable to today's rapidly changing environmental scene. However, the Act must continue to be reauthorized to ensure it is relevant, efficient, and usable.

Mr. Bill Chandler began by stating that NMSA has been at war with itself since its creation. The Act includes nine stated purposes, but lacks a grand design for how these potentially conflicting purposes are to be achieved. In order to be more effective NMSA should move towards an ecosystem-based management approach that accounts for all uses. The Act's authority is concentrated in the Secretary of Commerce, who has the legal flexibility to focus sanctuaries on protection and compatible uses, or to allow uses that really are not compatible, like bottom trawling.

Mr. Chandler further explained that at present NMSA is not scientifically up to date. The program lacks an ecological classification system for marine sanctuaries, and only covers a small area of U.S. waters (and none in Alaska). There is more available knowledge about marine biology and ecological diversity that should be applied to the sanctuaries program to make it more effective. In addition, Mr. Chandler explained that currently there is no easy way to track the conservation success of the sanctuary system as a whole, due to a lack of a clear mission statement and objectives.

Mr. Chandler suggested six ways to amend and strengthen NMSA. The first is to clarify that *protection* of marine ecosystems is the primary purpose of the Act, and to make clear that each sanctuary should be managed holistically as an ecosystem. The second is to mandate a national classification system for marine bioregions and historic resources, and that the system of sanctuaries reflect the diversity of all marine bioregions. The third is to continually inventory potential new sanctuary sites and their status as candidates. The fourth is to consider delineating marine reserves in at least some portion of a sanctuary, in order to safeguard the fish and wildlife species there. The fifth is to ban any uses within sanctuaries that would harm marine life, such as oil and/or gas development, bottom trawling, and others. Mr. Chandler concluded by noting that the emerging national ocean policy and marine spatial planning efforts led by CEQ may provide a basis for establishing new sanctuaries using the best scientific information available.

Mr. Robert Hayes began by explaining that the recreational fishing industry, both the fishermen themselves and those that sell bait, is surrounded by a fair amount of misinformation that makes it seem more sinister than it actually is. In actuality the recreational fishing industry results in little environmental impact with positive economic impact, which makes the fishing industry a powerful and environmentally conscious sector.

Mr. Hayes noted the attention that the recreational fishing community received when many members opposed the recent protected area designations made in the Pacific. He explained that the opposition was not to potentially protecting the areas, but to the process that was used – that is, that the Antiquities Act was used, which lacks a public participation mechanism, rather than NMSA or the National Wildlife Refuge Act. Mr. Hayes then contrasted the NMSA designation process, which is long, cumbersome, and involves the public – three elements he believes are necessary for effective policymaking.

Mr. Hayes made several recommendations for how to change the Act. He noted that there are organizational issues within NOAA that should be addressed, issues that cause friction and prevent decisions from being made. He specifically cited the split of authority over sanctuaries and fisheries between the National Ocean Service and the National Marine Fisheries Service. Mr. Hayes also explained that reauthorization should be an open process in which interested entities can submit their input and analysis, such as on what uses should be allowed within the sanctuary. All decisions under the Act should be based on and supported by science. A strong scientific basis will make it easier to garner support for the sanctuaries and regulatory decisions. Waters should become more accessible, unless there is a scientific reason to ban recreational fisherman from a specific site. He noted that if there is a scientific reason to exclude recreational fishermen, the community will comply because of its major interest in ensuring sustainability. Mr. Hayes concluded by noting that as linked with the current emphasis on marine spatial planning, the recreational fishing industry generally supports any approach that emphasizes the need to maintain creativity in marine management.