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S. 2635

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

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

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A BILL

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Gulf of the Farallones extends approximately 100 miles along the coast of Marin and Sonoma counties of northern California. It includes approximately one-half of California's nesting seabirds, rich benthic marine life on hard-rock substrate, prolific fisheries, and substantial concentrations of resident and seasonally migratory marine mammals.

(2) Cordell Bank is adjacent to the Gulf of the Farallones and is a submerged island with spectacular, unique, and nationally significant marine environments.

(3) These marine environments have national and international significance, exceed the biological productivity of tropical rain forests, and support high levels of biological diversity.

(4) These biological communities are easily susceptible to damage from human activities, and must be properly conserved for themselves and to protect the economic viability of their contribution to national and regional economies.

(5) The Gulf of Farallones and Cordell Bank include some of the Nation's richest fishing grounds, supporting important commercial and recreational fisheries. These fisheries are regulated by State and

Federal fishery agencies and are supported and fostered through protection of the waters and habitats of Gulf of the Farallones National Marine Sanctuary and Cordell Bank National Marine Sanctuary.

(6) The report of the Commission on Ocean Policy established by Public Law 106–256 calls for comprehensive protection for the most productive ocean environments and recommends that they be managed as ecosystems.

(7) New scientific discoveries by the National Marine Sanctuary Program support comprehensive protection for these marine environments by broadening the geographic scope of the existing Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

(8) Cordell Bank is at the nexus of an ocean upwelling system, which produces the highest biomass concentrations on the west coast of the United States.

SEC. 3. POLICY AND PURPOSE.

(a) POLICY.—It is the policy of the United States in this Act to protect and preserve living and other resources of the Gulf of the Farallones and Cordell Bank marine environments.

(b) PURPOSE.—The purposes of this Act are the following:

(1) To extend the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary to the areas described in section 5.

(2) To strengthen the protections that apply in the Sanctuaries.

(3) To educate and interpret for the public regarding those marine environments.

(4) To manage human uses of the Sanctuaries under this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

(c) EFFECT ON FISHING ACTIVITIES.—Nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries.

SEC. 4. DEFINITIONS.

In this Act:

(1) AQUACULTURE.—The term ''aquaculture'' means the propagation or rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose.

(2) CORDELL BANK NMS.—The term ''Cordell Bank NMS'' means the Cordell Bank National Marine Sanctuary.

(3) FARALLONES NMS.—The term ''Farallones NMS'' means the Gulf of the Farallones National Marine Sanctuary.

(4) SANCTUARIES.—The term ''Sanctuaries'' means the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, as expanded by section 5.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(6) PERSON.—The term ''person'' means—

(A) any private or public individual, corporation, partnership, trust, institution, association, or other entity, whether foreign or domestic; or

(B) any officer, employee, agent, department, agency, or instrumentality of—

(i) the Federal Government;

(ii) any State, tribal, or local unit of government; or

(iii) any foreign government.

SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY ADJUSTMENTS.

(a) GULF OF THE FARALLONES.—

(1) BOUNDARY ADJUSTMENT.—The areas described in paragraph (2) are added to the existing Gulf of the Farallones National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREAS INCLUDED.—

(A) IN GENERAL.—The areas referred to in paragraph (1) consist of the following:

(i) 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 described in subparagraph (B).

(ii) The submerged lands and waters, including living marine and other resources within those waters, within the approximately two-square-nautical-mile portion of the Cordell Bank NMS (as in effect immediately before the enactment of this Act) that is located south of the area that is added to Cordell Bank NMS by subsection (b)(2), which are transferred to the

Farallones NMS from the Cordell Bank 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-

mencement point at the intersection of the MHWL and 39.00000 north. Coordinates listed in this subparagraph are based on the North American Datum 1983 and the geographic projection.

(b) CORDELL BANK.—

(1) BOUNDARY ADJUSTMENT.—The area described in paragraph (2) is added to the existing Cordell Bank National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREA INCLUDED.—

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

(B) BOUNDARY.—The boundary referred to in subparagraph (A) commences at the most northeastern point of the current Cordell Bank NMS boundary at 38.26500 degrees north, 123.18166 degrees west and extends northwestward to 38.30000 degrees north, 123.20000 degrees west, approximately 6 nautical miles (nm) west of Bodega Head. The

boundary then extends westward to 38.30000 degrees north, 123.66666 degrees west, approximately 28 nautical miles west of Bodega Head. The boundary then turns southward and continues approximately 32 nautical miles to 37.83333 degrees north, 123.66666 degrees west, and then approximately 11 nm eastward to 37.83333 north, 123.42333 west at an intersection with the current Gulf of the Farallones NMS boundary. The boundary then follows the current Cordell Bank NMS, which is coterminous with the current Gulf of the Farallones boundary, in a northeasterly and the northwesterly direction to its commencement point at 38.26500 degrees north, 123.18166 degrees west. Coordinates listed in this subparagraph are based on NAD83 Datum and the geographic projection.

(c) INCLUSION IN THE SYSTEM.—The areas included in the Sanctuaries under subsections (a) and (b) shall be managed as part of the National Marine Sanctuary System, established by section 301(c) of the National Marine Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with that Act.

(d) UPDATED NOAA CHARTS.—The Secretary shall—

(1) produce updated National Oceanic and Atmospheric Administration charts for the areas in which are located the Farallones NMS and Cordell Bank NMS; and

(2) include on those charts the boundaries of such national marine sanctuaries, as revised by this Act.

(e) BOUNDARY ADJUSTMENTS.—In producing revised charts as directed by subsection (d) of this section and in describing the boundaries in regulations issued by the Secretary, the Secretary may make technical modifications to the boundaries described in this section for clarity and ease of identification, as appropriate.

SEC. 6. PROHIBITION OF CERTAIN USES.

(a) MINERAL AND HYDROCARBON LEASING, EXPLORATION, DEVELOPMENT, AND PRODUCTION.—No leasing, exploration, development, production, or transporting by pipeline of minerals or hydrocarbons shall be permitted within the Sanctuaries.

(b) AQUACULTURE.—

(1) PROHIBITION.—It is unlawful for any person to conduct aquaculture—

(A) in any area of the Sanctuaries; or

(B) within Monterey Bay National Marine Sanctuary.

(2) EXISTING BIVALVE FARMING ALLOWED.—The prohibition in paragraph (1) shall not apply to persons and their successors conducting bivalve farming operations that are in existence on the date of enactment of this Act, and shall not apply to their successors in such operations.

(3) REGULATIONS.—The Secretary shall issue regulations that specify the operations referred to in paragraph (2).

(c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

(1) PROHIBITIONS.—It is unlawful for any person—

(A) to deposit or discharge any material or substance of any kind within the Sanctuaries;

(B) to deposit or discharge any material or substance of any kind that enters and injures any sanctuary resource (as that term is defined in the National Marine Sanctuaries Act); or

(C) to deposit or discharge any introduced species in the Sanctuaries.

(2) CHANGES IN SALINITY.—No person shall cause a change of salinity in the Sanctuaries that in-

jures, causes the loss of, or destroys any sanctuary resource.

(3) LIMITATION ON APPLICABILITY.—Paragraph (1) does not apply with respect to any discharge—

(A) of fish, fish parts, and chumming materials resulting from, and while conducting otherwise lawful, fishing activity;

(B) of biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device (as classified by the Coast Guard) that is approved in accordance with section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) if all marine sanitation devices on the vessel are secured in a manner that prevents discharge of untreated sewage from a Type I or Type II Coast Guard-approved sanitation devices on the vessel, except that this subparagraph does not apply with respect to a discharge from a cruise ship within the boundaries of either of the Sanctuaries;

(C) of biodegradable material resulting from deck wash down from a vessel;

(D) from vessel engine exhaust; or

(E) that—

(i) originates in the Russian River Watershed outside the boundaries of the Gulf of the Farallones National Marine Sanctuary;

(ii) originates from the Bodega Marine 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.

(d) CONSULTATION REQUIREMENT FOR CHANGES IN WATER FLOW.—Any Federal, State, or local government agency that is responsible for significant alteration of fresh water flow regimes that may affect the Sanctuaries must consult with the Secretary prior to initiating such change in order to ensure sanctuary resources are not injured.

(e) PENALTIES AND ENFORCEMENT.—A violation of this section shall be treated as a violation of section 306 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1436).

(f) SECRETARIAL AUTHORITY NOT LIMITED.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act limits the authority of the Secretary to prohibit, allow, or otherwise regulate the discharge of materials or other substances.

(2) LIMITATION WITH RESPECT TO DISCHARGES.—The Secretary may only modify the regulation of those activities listed in subsection (c) to further protection of sanctuary resources and qualities.

SEC. 7. MANAGEMENT PLANS AND REGULATIONS.

(a) INTERIM PLAN.—The Secretary shall complete an interim supplemental management plan for each of the Sanctuaries by not later than 30 months after the date of enactment of this Act, that focuses on management in the areas added to the Sanctuaries under this Act. The Secretary shall ensure that these supplemental plans shall not weaken existing resource protections.

(b) REVISED PLANS.—The Secretary shall issue a revised comprehensive management plan for each of the Sanctuaries during the first management review initiated after the date of the enactment of this Act under section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) for each of the Sanctuaries, and issue such final regulations as may be necessary.

(c) APPLICATION OF EXISTING REGULATIONS.—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), respectively, shall apply to the areas added to the relevant Sanctuary under section 5 until the Secretary modifies such regulations in accordance with this section.

(d) CONTENTS OF PLANS.—Revisions to each comprehensive management plan under this section shall, in addition to matters required under section 304(a)(2) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(A)(2))—

(1) facilitate all public and private uses of the national marine sanctuary to which the 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 that will—

(A) improve management of the Sanctuaries;

(B) diminish threats to the health of the ecosystems in the Sanctuaries; or

(C) fulfill both of subparagraphs (A) and (B);

(4) establish a long-term ecological monitoring program and database, including the development and implementation of a resource information system to disseminate information on the Sanctuaries' ecosystem, history, culture, and management;

(5) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);

(6) 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, including nonpoint discharges and navigation;

(7) in the case of revisions to the plan for the Farallones NMS, promote cooperation with farmers and ranchers operating in the watersheds adjacent to the Farallones NMS and establish voluntary best practices programs for farming and ranching;

(8) promote cooperative and educational programs with fishing vessel operators and crews oper-

ating in the waters of the Sanctuaries, and, whenever possible, include individuals who engage in fishing and their vessels in cooperative research, assessment, and monitoring programs and educational programs to promote sustainable fisheries, conservation of resources, and navigational safety; and

(9) promote education, among users of the Sanctuaries, about conservation and navigation safety.

(e) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in the revision of the comprehensive management plans and regulations under this section.

SEC. 8. FEASIBILITY OF A NEW SANCTUARY DESIGNATION.

(a) REVIEW AND RECOMMENDATION.—As part of the first review initiated after the date of enactment of this Act of the Gulf of the Farallones National Marine Sanctuary Management Plan pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)), the Secretary shall—

(1) conduct a review of the operations of the Farallones NMS; and

(2) following not less than one public hearing held in Sonoma County, California, and the receipt of public comment, determine whether the aea of the

Gulf of the Farallones National Marine Sanctuary expanded by this Act shall be designated as a new and separate national marine sanctuary.

(b) CONSIDERATIONS FOR DETERMINATION.—In making the determination under subsection (a)(2), the Secretary shall consider responsiveness to local needs, the effectiveness of conservation, education and volunteer programs, and organizational efficiency.

(c) IMPLEMENTATION OF DETERMINATION.—If the Secretary determines under subsection (b) to designate a new national marine sanctuary, the Secretary shall implement measures to assure a smooth and effective transition to a separate national marine sanctuary.

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