

August 18, 2008

The Honorable Madeleine Z. Bordallo
Chair, Subcommittee on Fisheries, Wildlife & Oceans
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry E. Brown, Jr.
Ranking Member, Subcommittee on Fisheries, Wildlife & Oceans
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Bordallo and Ranking Member Brown:

Thank you for the opportunity to testify on behalf of the National Marine Manufacturers Association (NMMA), the nation's leading recreational marine industry trade association, on July 24, 2008 regarding H.R. 6537, *The Sanctuary Enhancement Act* and H.R. 6204, *The Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act*. NMMA greatly appreciates the Subcommittee's work on these two important pieces of legislation and your willingness to hear the recreational marine industry's views in this process.

As you know, NMMA represents nearly 1,700 boat builders, engine manufacturers and marine accessory manufacturers who collectively produce more than 80 percent of all recreational marine products made in the United States. There are nearly 18 million recreational boats currently in operation in the United States. These boat owners power an important American manufacturing sector that contributed \$37.5 billion in new sales and services during 2007 alone. Overall, the direct and indirect economic impact nationwide from recreational boating totals approximately \$85.1 billion annually and supports more than 330,000 U.S. jobs.

Again, we appreciate your recognition that the recreational marine industry is an important stakeholder in your efforts to reauthorize and enhance the National Marine Sanctuaries Program. Per your request, enclosed you will find NMMA's response to the follow-up questions you posed. We hope our views and perspectives are useful, and please do not hesitate to contact me or Mathew Dunn (mdunn@nmma.org; 202-737-9760) of my staff if we can be of any further help. We look forward to continuing to work with you and the Members of the Subcommittee on this and other issues.

Sincerely,



Scott B. Gudes
Vice President, Government Relations

Executive Committee

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**Legislative Hearing on H.R. 6537, The Sanctuary Enhancement Act; and
H.R. 6204, The Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary
Modification Act.
July 24, 2008**

Questions for Mr. Scott Gudes

Questions from Chairwoman Madeleine Z. Bordallo (D-GU)

1. Thank you for your very helpful testimony. In your written statement you raise concerns that public access to aquatic resources for recreational purposes is increasingly restricted by policies promoting sound conservation. While resource protection may be the primary goal in strengthening the Sanctuary system, by no means should compatible human uses be eliminated or threatened by this legislation.
 - *How would you advise H.R. 6537 be revised to better incorporate compatible recreation into the mission statement? What exactly is “compatible recreation”?*

A. Madam Chair, we appreciate your recognition that compatible human uses, and specifically recreational uses, should not be threatened by any legislation to reauthorize and enhance the National Marine Sanctuaries Act (NMSA). As I mentioned in my written statement, recreation is a vital and longstanding component of the Act—and of federal policy more broadly—and Congress has routinely reaffirmed during previous reauthorizations of the Act the importance of maintaining a multiple-use management doctrine that not only enables compatible recreational uses but in fact “facilitates” them. We strongly believe this model should continue. Compatible recreation is, in our view, recreational boating and angling within the sanctuary boundaries under conditions which balance strong resource protection and the right for the public to access those resources held in their trust. To our knowledge, there is no scientific indication that recreational boating and angling within the sanctuary poses any threat to sanctuary resources. Indeed, boaters and anglers are robust stewards of the environment, the very constituents of programs like the National Marine Sanctuaries System. As I noted in my written statement to the Subcommittee, encouraging recreational access motivates sustainable practice by those who value the resources most, and it helps to maintain a cooperative, non-adversarial relationship between regulators and the regulated community, enhancing opportunities for mutually beneficial partnerships that improve, rather than inhibit, resource protection.

With respect to specific revisions to the current draft of the bill, we are deeply concerned about the bill’s striking of current law in Sec. 301(b)(6) of the Act directing NOAA to “facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources.” We would strongly recommend the retention of this language as a policy and purpose of the National Marine Sanctuary Act and encourage revising H.R. 6537 to do so.

Further, Madam Chair, Sec. 4 of H.R. 6537 should be amended to include recreation as a component of the National Marine Sanctuary System’s mission. The current draft would amend current law to make it the mission of the System to “protect, conserve, preserve restore, and recover the biodiversity, ecological integrity, and cultural legacy of the living and nonliving resources within the System for the benefit of present and future generations.” We respectfully suggest adding “and recreational” after “cultural” and before “legacy.” We also recommend that “education” of the public and youth should be explicitly listed in the mission statement, as this is a vital purpose of the Act.

- ***Would you suggest language addressing compatible recreation be included in other sections of this legislation as well?***

A. We would strongly encourage revising sections of the Act to clarify that compatible recreation is an important component of the System’s mission and purpose. In Sec. 5(a)(14), for example, the bill’s definition of “maritime heritage resource” does not include recreation as a point of significance for these protected resources. As you well know, Madam Chair, many divers and other recreational enthusiasts—who often access shipwrecks and other cultural resource by recreational boats—is an essential reason for their protection. We would further support additional language in H.R. 6537 to enhance and strengthen the education and outreach components of the National Marine Sanctuaries Program. The program should encourage and facilitate Americans visiting sanctuary resources, either to go diving or snorkeling, to recreationally fish in a sustainable way, or to simply connect with the resources in other ways, almost all of which require the use of a recreational vessel.

2. You noted during the question and answer session that your members are strongly opposed to the establishment of “no take” marine reserves.”

- ***Can you please explain why your members are so opposed to the concept? Is the process by which “no take” marine reserves have been established critically flawed? Is the underlying science inconclusive?***

A. NMMA and its members have no philosophical objection to the designation of no-take marine reserves, but this should be a management tool used on as a last resort and only when fully justified by sound science and hard data. On a broader level we are increasingly concerned that public access to our nation’s oceans and aquatic resources is becoming unduly restricted in place of policies that promote sound conservation and responsible recreation. As I noted in my written statement, Madam Chair, we do not oppose the designation of no-take marine reserves if—and only if—the prevailing scientific evidence, peer reviewed and methodologically robust, demonstrates that such a designation is absolutely necessary to protect resources, and then that designation should follow a process we outline below. Any such designation should be accompanied by strong, continuous monitoring and accountability metrics that enable the future reopening of the site when the protected resource is rebuilt.

Madam Chair, NMMA and its members are strong supporters of science-based conservation measures for specific species or groups of species. This is why we were robust advocates of the recent reauthorization of the Magnuson-Stevens Act. Such conservation measures are for a specific period of time until the species has recovered, and measures are undergirded by scientific evidence which, in the main, generates the support of boaters and anglers who care about the long-term sustainability and abundance of the species. But with respect to marine protected areas, too often the efforts are simply to identify geographic areas to close to fishing, permanently. It is, one might say, the path of least resistance, the easiest and cleanest option. Unfortunately, very many people depend on boating and fishing and permanent closures have real consequences for real people.

Finally, Madam Chair, we might add that we are concerned with language in H.R. 6537 in Sec. 3(a)(4) that definitively affirms that: “scientific research has confirmed the value of protected areas in the ocean.” We would merely contend that the scientific debate on this matter is ongoing.

- ***Considering that other consumptive users of wildlife, such as duck hunters and freshwater anglers, willing submit to fees, permits, take limits and time and area closures to pursue there pastime, why is the situation for saltwater anglers different?***

A. Under current fisheries management law, saltwater anglers are subject to and do comply with take limits, seasonal closures and other normal fisheries management tools. Presently, these requirements apply in National Marine Sanctuaries. With respect to permits, the 2007 bipartisan reauthorization of the Magnuson-Stevens Act includes a requirement to establish a registry of saltwater anglers, and enables a fee-system beginning in 2011 if the National Marine Fisheries Service (NMFS) moves in that direction, although NMMA believes a fee is not necessary while we strongly support this registry to enhance recreational fisheries data. Furthermore, Madam Chair, as you well know, recreational boaters and anglers, including saltwater anglers, provide the backbone of conservation initiatives in the nation through excise taxes on motorboat fuel, fishing tackle and electric motors, import duties, and other revenue mechanisms under the Sport Fish Restoration and Boating Trust Fund, which was reauthorized as part of the Highway bill in 2005. Each year, more than \$700 million collected under this highly successful “user tax” is distributed back to the states to finance important fishery conservation initiatives, boating safety programs, and other crucial environmental programs like the Clean Vessel Act pump-out program. Because conservation initiatives are so dependent on the revenues generated directly by recreational boating and angling, participation should be strongly encouraged nationwide. Significant reductions in participation in boating and angling could have dire consequences for these vital national and state conservation programs.

Madam Chair, a new fee for access into the National Marine Sanctuaries would mean that boaters and anglers would be paying to support government programs in the sanctuaries, by my count, *three times*. First, boaters and anglers provide the income taxes that pay for the general fund appropriations that the sanctuaries get in appropriations. Second, boaters and anglers pay for State ocean fishing licenses in a number of sanctuary states already, including Florida and California. In fact, in California, just a one-day ocean fishing license currently costs a recreational angler \$12.50. So any new fee would be on top of these existing taxes on boaters and anglers, and our view is that this is excessive and will drive people away from boating and angling participation.

Secondly, in the early 1990s the House Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies directed NOAA to study and consider a license fee to be charged of all users of the National Marine Sanctuary waters, including fishermen. NOAA conducted public meetings on this matter in several sanctuaries as part of this effort, and it is my recollection that NOAA’s report to the Congress was extremely negative on the question of new fees and found that they would be difficult and costly to implement. NMMA does not support a sanctuary user fee that is targeted to boaters and anglers.

- ***Are there specific conditions that should precede any designation of a “no take” marine reserve that your members are in agreement on?***

A. Yes. NMMA strongly supports language included in the Magnuson-Stevens Reauthorization Act (Sec. 303(b)(2)(C)) that clearly identifies the process that is required before designations of marine reserves that limit recreational fishing access should occur. The establishment of any MPA that restricts recreational fishing, regardless of its level of restrictions, should:

1. Be based on the best scientific information available;
2. Include criteria to assess the conservation benefits of the closed area;
3. Establish a timetable for review of the closed area’s performance that is consistent with the purposes of the closed area; and
4. Be based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combinations with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation.

Questions from Ranking Republican Member Henry E. Brown, Jr. (R-SC)

1. Have many of the existing Sanctuaries or monuments limited access to recreational fishing activities?

A. Ranking Member Brown, our understanding is that the prohibition of recreational fishing activities in current National Marine Sanctuaries totals 3.2 percent of the System, which amounts to 585.4 square miles. This figure does not include the very remote Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands (NWHI), which is a reserve of 44,564 square miles, or other areas that have partial fishing restrictions (e.g. rockfish closures along west coast). Currently, the areas closed to all recreational fishing are in the Florida Keys (220 square miles), Channel Islands (307 square miles), and Monterey Bay (58.4 square miles) National Marine Sanctuaries (with the last two including areas that are closed under state regulations, not NMSA). In total, including NWHI, 45,149 square miles of the National Marine Sanctuary System are marine reserves, according to the National Marine Sanctuaries Program. We also understand that there is an effort underway to examine establishing a research-only area in about 40 percent of the Gray's Reef National Marine Sanctuary, which totals about 9 square miles.

In the main, the Designation Documents of the Sanctuaries do not provide authorities for sanctuary managers to regulate fishing, leaving these authorities to the National Marine Fisheries Service. We support this approach. There is, however a clear trend in some states to prohibit recreational fishing activities. For example, in California, under the Marine Life Protection Act (MLPA), 9 percent of state waters have been closed to recreational fishing altogether, mostly in premier sportfishing sites. Access restrictions have implications beyond recreational fishing as well. For example, the use of personal watercraft (PWC) has been banned in most areas of the Monterey Bay, Cordell Bank, and Gulf of the Farallones National Marine Sanctuaries, although other vessels are allowed. NMMA does not support arbitrary restrictions of specific types of vessels, particularly in the absence of any scientific evidence that modern PWC pose any environmental risks.

2. You mention in your testimony that the Sanctuaries Act and Congress have balanced preservation of the resource with compatible human uses. What do you consider to be compatible human uses within a sanctuary?

A. The legislative history of the Act is very clear with respect to the affirmation of the multiple-use management doctrine. Under current law, NOAA and the National Marine Sanctuary Program have an obligation, stated explicitly, to strive toward a management approach that balances resource protection with the rights of boaters, anglers and other user groups who are entitled to access the public aquatic treasures that are held in the their trust. A reasonable expectation of access is currently required under the law. Certainly this is what Congress intended when it passed the Act and in each case when it reauthorized the Act—a comprehensive system of managing key ocean resources that emphasizes balance and not prohibition. We reiterate our view that this tradition should be followed with this new reauthorization, and even strengthened. Responsible and environmentally sound recreational boating and angling are compatible human uses within a sanctuary, and as we have noted serve to enhance the public's understanding and appreciation of America's special marine sites.

3. Is your biggest concern with H.R. 6537 the potential to limit access to Sanctuaries for recreational fishing activities?

A. The potential reduction in recreational boating and fishing access is a major concern with the legislation, although we are confident that the legislation can be revised in a manner that retains its intent while preserving recreational opportunities, and we look forward to working with the Subcommittee toward this end.

4. Do you think support for the Sanctuary program will decrease if access to marine sanctuaries is limited?

A. Yes. As we have noted, undue restrictions on recreational boating and angling within marine sanctuaries will likely alienate one of the sanctuaries' core stakeholders. Recreational access and resource protection are not mutually exclusive goals—they are mutually reinforcing. NMMA believes the Sanctuary Program would be strengthened by enhanced outreach to the recreational boating and fishing communities.

5. Are you at all concerned that the legislation removes the prohibition on new designations when the Sanctuary Program still has not certified that they have adequate funding to manage the existing sanctuaries? Does it concern you that the National Park System is facing a \$5 billion backlog and the National Wildlife Refuge System is facing a \$3.5 billion backlog, and this legislation would remove the one provision which keeps the National Marine Sanctuary Program from facing a similar fate?

A. Ranking Member Brown, we believe this is a very valid concern. Furthermore, the bill's apparent shift of fishing authorities from NMFS to the Office of National Marine Sanctuaries (ONMS) does not seem fiscally or institutionally wise. As I mentioned in my written statement, NMFS has more than 3,000 federal employees and a budget of \$829 million. ONMS, by comparison, has 170 employees and a budget of \$64 million. My experience working in government over the years leads me to believe that resources required to expand the sanctuary program—and to add to its regulatory responsibilities in a significant way—will not be readily available in our current fiscal and economic environment. As such, it would seem unwise to move down such a path at this time.

Additionally, we would simply reiterate that Congress harbored concerns that the National Marine Sanctuaries Program would overreach in designating new sanctuaries. Section 303(b)(1) lists the factors that the Secretary of Commerce must consider when determine if an area should be designated a sanctuary such as “the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities.” Our view is that a manageable sanctuary system is beneficial for the Agency, the resource, and the regulated community.

6. Do you think the requirement to achieve a certain number of Sanctuaries in the program by 2030 is reasonable? Should scientific criteria drive the Sanctuary designation process?

A. NMMA is concerned that the expansion goal as mandated in H.R. 6537 is highly ambiguous and consequently will result in confusion and perhaps unnecessary anxiety in the regulated community. The expansion goal would appear to require the designation of “large areas of the marine environment,” which is the legislation's definition of marine ecoregions. As we have noted, we believe that sound science—rather than geography—and the specific needs of a resource should be determining factors in the designation of a marine protected area. It makes no sense to simply designate large marine sites for the purpose of being in the System, something which could have significant unintended consequences for boaters and anglers.

7. You mention the language in H.R. 6537 which would give the Sanctuary program authority over resources beyond the boundaries of the Sanctuary. Is this reasonable?

A. We are concerned about this language, as we noted in our written statement, and would encourage revising the bill to delete or substantially amend the apparently broad authority that would be granted to individual sanctuary managers to regulate areas outside of sanctuary boundaries. Sec. 12(h) (A) of the bill represents a significant and unclear expansion of the authorities of the NMSP, and while we support enhanced coordination among federal agencies, we do not believe this is the appropriate way to get there. This current language in H.R. 6537 on this question is vague and expansive, and we would urge its removal from the bill.

8. Do you support the regional fishery management council process for managing fisheries in Sanctuary areas? What is the problem with moving fishery management away from the Councils, as is done in H.R. 6537?

A. We do not support the language in H.R. 6537 regarding fishery management, which we believe is a significant and unadvisable departure from the status quo. NMMA strongly believes that the Magnuson-Stevens Act—and the Regional Fishery Management Councils—should remain the prevailing federal authority on fisheries management and that management should continue to occur by the professionals at the National Marine Fisheries Service. The Councils, while imperfect, are unique among Federal regulatory entities. They involve the Federal Government, the States, the industry and outside groups in the management of marine resources. But, at the end of the day, few outside entities better bring together large number of disparate stakeholders in the management of the resource. H.R. 6537 enables the Sanctuaries Program to essentially override the Council process, which could have negative consequences. Additionally, as I mentioned above, the ONMS lacks the resources, financial and staff, to properly manage fisheries at this time.

9. As a former senior NOAA official, do you have concerns with fishery management decisions being made either by NOS or individual sanctuary managers?

A. Congressman Brown, I spent almost five years working to get NOAA to function as one agency. During my year as Acting Administrator and during my nearly five years as Deputy Under Secretary, I stressed corporate identity and integration and continually fought the tendency among NOAA's components to view themselves as independent organizations or stove pipes and independent fiefdoms. Vice Admiral Lautenbacher tasked me to lead a NOAA-wide effort to reform the agency for the future called "The NOAA Program Review," and a central recommendation was moving to a future NOAA that eliminated the current line office structure and instead reorganized NOAA functionally. While the NOAA Program Review recommendation was considered too bold and threatening to existing structures and interests, under Vice Admiral Lautenbacher's leadership, NOAA has continued to stress integration and teamwork.

With that in mind, I am not concerned about NOS being more involved in living marine resource management. Both NOAA Fisheries and NOS are integral parts of NOAA, and they already work together on a broad array of issues, such as habitat restoration, coral reef preservation, and estuarine and coastal management. They have worked together in the sanctuary areas for years, and there are internal agency efforts underway to improve that coordination which we think are very positive. But, if the sanctuary program is ultimately put in charge of fisheries management, I would hope that Congress would not approve appropriations to create duplicative and redundant positions and programs. Existing expertise in living marine resource programs should be tapped and used. My view is that the Sanctuary program should use increased resources to meet other shortfalls in under-resourced areas, such as education, public outreach and enforcement.

With respect to the Magnuson-Stevens Act and the Regional Fishery Management Councils, these Councils are unique among Federal programs by including relevant citizens and stakeholders and empowering them to manage fishery resources. Many have criticized the Council structure, but at the end of the day these regional Councils are the best form of governance for fisheries that have been invented. The Councils balance competing interests. Fisheries are largely regional and the species and issues impacting the Alaska region are totally different than those in the Southeast and South Atlantic—and the Councils are attuned to the issues and circumstances in specific areas of the U.S. and they have great scientific capability and expertise. It would, in my view, be unfortunate if the Committee effort on reauthorization of NMSA weakened the Councils or Magnuson-Stevens.

As I noted during the hearing and as you well know, living marine resource management is the most controversial and politically charged part of NOAA. It is a regulatory function and often lands the Agency in the purview of the Third Branch of the U.S. Government. The Committee should be fully cognizant of this when considering changes to the current management structure and process.

Finally, Congressman Brown, I would note that whether NMFS or NOS leads NOAA fisheries management in the sanctuary waters is less important than the goals of that management, which should and must be to manage and conserve fisheries in a sustainable manner, supported by scientific analysis and peer reviewed data. Obviously it

is our view that recreational fishing is the highest and best use of these resources, including economic impact. If instead the Committee's intention is to empower the National Marine Sanctuary Program to manage fisheries—not for sustainable yield and conservation—but rather to treat, essentially, all fisheries as protected species (like marine mammals) and to turn our national marine sanctuaries into large open ocean aquariums, we would obviously find this objectionable.

10. Did your organization support the recently enacted Magnuson-Stevens Act provision that required the Regional Fishery Management Councils to base their harvest levels on the recommendation of the Science and Statistical Committees? If so, does your organization support fisheries management based on science? Are you then concerned about the provisions of H.R. 6537 that allow sanctuary managers to use their own judgment rather than the recommendations of the Council when the Council can't act in time or when what the Council recommends doesn't meet the goals of the sanctuary in the view of the sanctuary manager?

A. Yes, we strongly supported the recent bipartisan reauthorization of the Magnuson-Stevens Act and commend the Subcommittee for its work in this regard. We strongly support science-based fisheries management, and we are concerned with current language in H.R. 6537 that would appear to alter the fisheries management process that has so recently been reauthorized by Congress. We share your concern that the deadlines for Council action in H.R. 6537 are insufficient for the Councils and their affiliated bodies to assess proper fishery management measures. This process, by its nature, takes time—the science must be sorted out; the relevant stakeholder must be involved; and the right decisions need to be made over thoughtful deliberation and debate under the prevailing statutory authorities.