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111TH CONGRESS *1st Session*	SENATE	REPORT 111–65

THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY MODIFICATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 380



AUGUST 4, 2009.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

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THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY MODIFICATION ACT

AUGUST 4, 2009.—Ordered to be printed

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

REPORT

[To accompany S. 380]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 380) to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, 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. 380, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act, is to extend the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve to encompass the offshore waters of Presque Isle and Alcona counties, Michigan, and outward to the international border between the United States and Canada, and to provide protection for the underwater cultural resources.

BACKGROUND AND NEEDS

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 (16 U.S.C. 1431 et seq.). Title III of that statute authorized 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. In 1992, under title II of the Oceans Act (P.L. 102–587), the NMSA amended the

MPRSA process for considering sanctuary designation standards and procedures. Currently, a total of thirteen national marine sanctuaries and four national marine monuments encompass approximately 150,000 square miles of marine and Great Lakes waters. Sanctuaries vary in size from one square mile to 137,792 square miles.

The NMSA 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, which defines: (1) the area of the sanctuary; (2) the characteristics of the area that give it value; and (3) the types of activities that will 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, the disturbance of seabed and cultural resources, and exploration and development of oil, gas, and minerals within the sanctuary.

The 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, which is comprised of representatives from various public interest organizations, scientific and educational organizations, and commercial and recreational 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, Sanctuary Advisory Councils, working groups, and the public may identify issues that could lead to the decision to restrict or prohibit certain activities in the sanctuary.

The 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 the NMSA included a provision that placed a limitation on the creation of new sanctuaries in an effort to address the impact of decreasing appropriations on the ability to provide 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 one national marine monument have been added to the program through three different processes: (1) the NMSP process; (2) Congressional designation; and (3) Executive Order. 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, and the Florida Keys National Marine Sanctuary and Protection Act designated the Florida Keys National Marine Sanc-

tuary, which enveloped the existing Key Largo and Looe Key National Marine Sanctuaries in 1996. The Executive Branch used authorities provided by the Antiquities Act of 1906 (16 U.S.C. 431) to designate the Papahanaumokuakea National Monument, the Marianas Trench Marine National Monument, the Pacific Remote Islands National Monument, and the Rose Atoll Marine National Monument as a marine national monuments. Paphanaumokuakea National Monument is also a national marine sanctuary. To date, the Congress also has enacted legislation to expand the boundaries of one existing sanctuary. The National Marine Sanctuaries Preservation Act of 1996 added Stetson Bank to the Flower Garden Banks National Marine Sanctuary.

The Thunder Bay National Marine Sanctuary was designated on October 7, 2000, marking the establishment of the first Great Lakes sanctuary. It was established for the purposes of providing long-term protection and management to more than 100 shipwrecks located entirely in state waters. The Sanctuary is located off the northeast coast of Michigan's Lower Peninsula, marked by the northern and southern limits of Alpena County and encompasses 448 square miles of Lake Huron and 115 miles of shoreline.

The legislation would expand the Sanctuary's boundaries to include a total of 225 miles of shoreline and 4,085 square miles of water. The expansion would provide protection to more than 100 additional shipwrecks important to the maritime history of Michigan and the Great Lakes. These archeological sites are also one of the Nation's best-preserved and historically-significant collections of shipwrecks.

SUMMARY OF PROVISIONS

The Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act would extend the Sanctuary's boundaries to include 3,722 square miles of Lake Huron and 225 miles of shoreline off Alcona, Alpena and Presque Isle Counties in Michigan and would extend the Sanctuary east to the International Boundary. This expansion would include more than 200 additional shipwrecks and would protect the remains of various commercial fishing sites, historic docks, and other underwater archaeological sites.

The regulations currently applicable to the Sanctuary would apply to the new area included in the Sanctuary unless the Secretary of Commerce specifies otherwise. To the extent practicable, the NOAA would apply the existing management plan to the area added to the Sanctuary.

LEGISLATIVE HISTORY

On February 4, 2009, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Act, S.380, was introduced by Senator Levin. The Senate Committee on Commerce, Science, and Transportation reported the bill with an amendment favorably on May 20, 2009.

Staff assigned to this legislation are Kristen Sarri, Democratic Professional Staff, and Todd Bertoson, Republican Senior Counsel.

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:

JUNE 16, 2009.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 380, the Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 380—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act

Summary: S. 380 would expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, located in Lake Huron and managed jointly by the state of Michigan and the National Oceanic and Atmospheric Administration (NOAA). Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 380 would cost $8 million over 2010–2014 period. Enacting the bill would have no effect on direct spending or revenues.

S. 380 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 380 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—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	2	2	2	2	1	9
Estimated Outlays	1	2	2	2	1	8

Basis of estimate: For this estimate, CBO assumes that S. 380 will be enacted near the end of 2009 and that necessary funds will be appropriated for the activities authorized by the bill for each fiscal year. Estimated outlays are based on historical spending patterns for NOAA activities.

The new boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve would include submerged lands off Presque Isle and Alcona counties in Michigan, and outward to the international border between the United States and Canada. Based on information from NOAA, CBO estimates that the agency would

need about $1 million per year to administer the expanded area and about $5 million in the first few years for necessary infrastructure investments, including a new vessel, additional office space, and new signs.

Intergovernmental and private-sector impact: S. 380 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Shannon Fairchild and Leo Lex; 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 regulations.

ECONOMIC IMPACT

The bill, as reported, is expected to have a positive impact on the nation's economy by increasing tourism and expanding sanctuary designation for historic resources.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

The reported bill would not increase paperwork requirements for the private sector. The bill would require the Secretary of Commerce to produce updated National Oceanic and Atmospheric Administration nautical charts for the areas in which the Sanctuaries are located and complete an interim supplemental management plan for the Sanctuaries to include the expansion areas.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that the bill as reported contains no Congressionally directed spending items.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

This section would provide that the legislation may be cited as the "Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act."

Section 2. Findings and Purposes.

This section would state that the purpose of the Act is to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve to encompass the offshore waters of Presque Island and Alcona counties in Michigan and outward to the international border between the United States and Canada to protect the underwater cultural resources.

Section 3. Definitions.

This section would define "Sanctuary" as the Thunder Bay National Marine Sanctuary and Underwater Preserve, and "Secretary" as the Secretary of Commerce.

Section 4. Sanctuary Boundary Adjustments.

This section would modify the existing Thunder Bay National Marine Sanctuary and Underwater Preserve boundaries to include the submerged land and underwater resources off of Alcona, Alpena, and Presque Isle counties in Michigan and outward to the international boundary with Canada. Also, it would permit the Secretary of Commerce to make minor adjustments to the boundary to facilitate enforcement and clarify the boundary to public. The modified Sanctuary would 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. The Secretary would produce updated NOAA nautical charts for the area in which the Sanctuary is located.

Section 5. Extension of Regulations and Management.

This section would apply existing regulations of the Thunder Bay National Marine Sanctuary and Underwater Preserve to the expanded sanctuary, unless the Secretary of Commerce specifies otherwise by regulation. In addition, the Secretary would have the authority to certify that any license, permit, approval, other authorization, or right to conduct a prohibited activity that currently exists in the sanctuary shall apply to such an activity conducted within the expanded sanctuary. To the extent practicable, the Secretary would apply the management plan currently in effect for the sanctuary to the expanded sanctuary.

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.

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