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# “COMPATIBLE USE” WITHIN NATIONAL MARINE SANCTUARIES: DETERMINING MEANINGFUL IMPLEMENTATION

*Susan E. Farady\**

## I. INTRODUCTION

Americans are accustomed to the idea that certain natural areas on land are more restrictively managed than other areas in order to protect unique habitat, wildlife, or natural features. The act of drawing a boundary around an area and designating it as a wildlife refuge, for example, implies a heightened level of protection for that land because it is a unique location for wildlife. A key threshold question regarding management of such areas is “what activities are allowed within them?” Restrictions on human activities generally reflect larger management goals regarding necessary resource protection and appropriate levels of human access for different types of protected areas. For example, a national park with paved roads, parking lots, and campsites allows a wider range of human activities and impact upon resources compared to a remote wilderness area with sensitive habitat where all motor vehicles are prohibited and only primitive camping is allowed.

During the last century, terrestrial protected areas, such as parks and refuges, which restrict human activity, have been established to protect ecosystems, natural beauty, and native species in large part because of concerns regarding the rapid loss of terrestrial wilderness. The public generally accepts these terrestrial protected areas.<sup>1</sup> Despite growing

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1. See OCEAN STUDIES BOARD, NATIONAL RESEARCH COUNCIL, MARINE PROTECTED AREAS: TOOLS FOR SUSTAINING OCEAN ECOSYSTEMS 11 (2001).

concerns about the state of ocean ecosystems, this approach regarding the use of protected areas has not translated well to the marine environment, and we have a less sophisticated regime of protected areas in the ocean than on land.<sup>2</sup> Marine protected areas (MPAs) in the United States tend to be established in an ad hoc fashion in response to various resource issues, such as fishery stock declines or proposed industrial uses, and are administered by various agencies with different, and sometimes contradictory or conflicting, management goals.<sup>3</sup> The range of protections available within MPAs varies widely and is often quite controversial; many areas of the ocean lack protection of any kind.<sup>4</sup>

### *National Marine Sanctuaries*

One particular type of MPA in the United States is a national marine sanctuary. Despite the name “sanctuary” which colloquially connotes high levels of protection and significant restrictions on activities, the question of “what activities are allowed,” when posed regarding national marine sanctuaries, leads to varying and complex answers. An initial examination of the Marine Protection, Research and Sanctuaries Act<sup>5</sup> is necessary in order to understand why “sanctuary” in name does not always mean “sanctuary” in application.

The Marine Protection, Research and Sanctuaries Act was passed in 1972 to prevent “unregulated dumping of material into ocean waters” that endanger “human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.”<sup>6</sup> This Act also included Title III, which later became the National Marine Sanctuaries Act (Sanctuaries Act or Act). Both the Secretary of the Department of Commerce and the U.S. Congress have the authority under the Sanctuaries Act to set aside discrete areas of the marine environment as national marine sanctuaries to promote comprehensive management of their special conservation, recreational, ecological, historical, research, educational, or aesthetic resources.<sup>7</sup> In 1975, the nation’s first marine sanctuary was created

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2. *Id.*

3. See JENNIFER ATKINSON ET AL., CONSERVATION LAW FOUNDATION, *THE WILD SEA: SAVING OUR MARINE HERITAGE* 57-58 (2000).

4. OCEAN STUDIES BOARD, *supra* note 1, at 151-52; CHERI RECCHIA & SUSAN FARADY ET AL., THE OCEAN CONSERVANCY, *MARINE AND COASTAL PROTECTED AREAS IN THE UNITED STATES GULF OF MAINE REGION 9* (2001).

5. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. §§ 1401-1445 (1972).

6. *Id.* § 1401(a).

7. National Oceanic and Atmospheric Administration, *About Your National Marine Sanctuaries: History*, <http://www.sanctuaries.nos.noaa.gov/about/history/welcome.html> (last

to preserve the wreckage of the USS Monitor, a Civil War vessel off the coast of North Carolina.<sup>8</sup> Over the past thirty-one years, twelve additional marine sanctuaries and a national monument have been added to form the National Marine Sanctuary System, which encompasses more than 150,000 square miles of marine and Great Lakes waters, and spans from Washington State to the Florida Keys, and from Lake Huron to American Samoa.<sup>9</sup>

The name “sanctuary” suggests that these sites are highly protected and that human activities within them are limited. In fact, the dictionary defines “sanctuary” as “a consecrated place . . . for worship” and also as “a place of refuge and protection; a refuge for wildlife where predators are controlled and hunting is illegal.”<sup>10</sup> However, the Sanctuaries Act contains two other broad purposes in addition to protection: enhancing public awareness, understanding, appreciation, wisely using the marine environment, and encouraging multiple human uses of sanctuary resources.<sup>11</sup> According to the National Oceanic and Atmospheric Administration, the main goal of a sanctuary is “to protect its natural and cultural features while allowing people to use and enjoy the ocean in a sustainable way.”<sup>12</sup> This objective is contradictory in calling for resource protection while simultaneously allowing sustainable uses of those same resources, and one may question how it is possible to always do both. In fact, the conservation effectiveness of sanctuaries is seriously in question. A recent report analyzing MPAs in the U.S. Gulf of Maine region found that closed areas implemented to aid struggling groundfish stocks under fishery management authority were providing more overall protection to the marine environment than the region’s national marine sanctuary site, which has a broader protective purpose.<sup>13</sup>

The question of how activities in national marine sanctuaries are managed has attained a higher profile in the past several years as interest in improved management of ocean resources generally, and MPAs specifically, has increased. How we as a society manage our ocean resources and determine access to them has received attention recently at

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visited Sept. 15, 2006).

8. *Id.*

9. *Id.*

10. Merriam-Webster Online Dictionary, <http://www.m-w.com/dictionary/sanctuary> (last visited Sept. 22, 2006).

11. CENTER FOR ECONOMY AND THE ENVIRONMENT, PROTECTING OUR NATIONAL MARINE SANCTUARIES 9 (2000).

12. National Oceanic and Atmospheric Administration, *About Your National Marine Sanctuaries: Frequently Asked Questions*, <http://www.sanctuaries.nos.noaa.gov/about/faqs/welcome.html> (last visited Sept. 22, 2006).

13. RECCHIA & FARADY ET AL., *supra* note 4, at 68.

the national level with the release of reports by the Pew Oceans Commission in 2003, the U.S. Commission on Ocean Policy in 2004, at the state level with the final report of the Massachusetts Ocean Task Force followed by introduction of comprehensive legislation in 2004, and formation of the California Ocean Protection Council in 2004.<sup>14</sup>

Additionally, MPAs have been the focus of an Executive Order issued by President Clinton in 2000, the California Marine Life Protection Act passed in 1999, and initiatives by regional, national, and international nonprofit organizations.<sup>15</sup> With oceans and protected areas receiving increased attention, sanctuaries have also come under more scrutiny. The question of what activities should be allowed in sanctuaries, and if restricted, what range of restrictions should apply, is increasingly of interest and concern to many stakeholders. For example, processes concerning the siting of no-take marine reserves within national marine sanctuaries have occurred at the Florida Keys and Channel Islands sites, and the specific question of how fisheries should be regulated within sanctuaries has proven controversial at many sites around the country.<sup>16</sup>

Are sanctuaries intended to be highly protected areas allowing few human activities? Are they intended to be open multiple use areas with few restrictions? Or are they something in between? The lengthy legislative history of the Sanctuaries Act illustrates years of debate over whether the Act's purpose encourages resource protection or multiple use, and the plain language of the statute itself illustrates the tension between these purposes.<sup>17</sup>

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14. See generally PEW OCEANS COMM'N, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE (2003); U.S. COMM'N ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY (2004); MASS. OCEAN MGMT. TASK FORCE, WAVES OF CHANGE (2004); California Ocean Protection Council, <http://resources.ca.gov/copc/> (last visited Sept. 12, 2006).

15. See generally Exec. Order 13,158, 65 Fed. Reg. 34,909 (May 26, 2000); California Marine Life Protection Act Initiative, <http://www.dfg.ca.gov/MRD/mlpa/> (last visited Sept. 12, 2006); RECCHIA & FARADY ET AL., *supra* note 4; ATKINSON ET AL., *supra* note 3; CONSERVATION LAW FOUNDATION & WORLD WILDLIFE FUND-CANADA, MARINE ECOSYSTEM CONSERVATION FOR NEW ENGLAND AND MARITIME CANADA: A SCIENCE-BASED APPROACH TO THE IDENTIFICATION OF PRIORITY AREAS FOR CONSERVATION (forthcoming 2006), available at <http://www.clf.org/oceanconservation>.

16. See Florida Keys National Marine Sanctuary, Tortugas Ecological Reserve, <http://floridakeys.noaa.gov/tortugas/welcome.html> (last visited Sept. 12, 2006); Channel Islands National Marine Sanctuary, Marine Reserves, <http://channelislands.noaa.gov/marineres/main.html> (last visited Sept. 12, 2006); Jeffrey Zinn & Eugene H. Buck, *Marine Protected Areas: An Overview*, CRS REPORT FOR CONGRESS (Feb. 8, 2001), <http://ncseonline.org/NLE/CRSreports/Marine/mar-39.cfm?&CFID=5609203&CFTOKEN=46106595> (last visited Sept. 12, 2006).

17. William Chandler & Hannah Gillelan, *The History and Evolution of the National*

Statements including both conservation and use are found in the “findings” section of the Act, such as “national marine sanctuaries . . . will . . . improve the *conservation*, understanding, management *and* wise and sustainable *use* of marine resources” and will “maintain for future generations the *habitat, and ecological services* of the natural assemblage of living resources that inhabit the area.”<sup>18</sup> The Act’s “purposes and policies” section similarly contains statements of sanctuary purposes as both protection of natural resources and human access to those resources, such as “to maintain the *natural biological communities* in the national marine sanctuaries, and to *protect*, and, where appropriate, *restore* and enhance *natural habitats, populations and ecological processes*” and “to enhance public awareness . . . and *wise and sustainable use* of the marine environment.”<sup>19</sup>

One provision of the “purposes and policies” section of the Sanctuaries Act succinctly captures the tension between a preservation mandate and a multiple use purpose: “[T]o facilitate to the *extent compatible with the primary objective of resource protection, all public and private uses* of the resources of these marine areas not prohibited pursuant to other authorities.”<sup>20</sup> This statement is unambiguous in articulating a sanctuary’s “*primary purpose*” is resource protection. Yet coupled with the requirement that *all* public and private uses be facilitated in ways that are compatible with that purpose, the statute now appears somewhat contradictory.<sup>21</sup>

This “compatibility” language raises a range of management questions that go to the heart of how sanctuary resources are to be simultaneously protected and used. Sanctuary managers must consider how to determine if a human activity is part of “wise and sustainable use of the marine environment” or if it threatens a sanctuary’s habitat and ecological processes and is thus incompatible with the “primary purpose” of resource protection. Management decisions include how to determine whether a proposed new use is “compatible”; when an increased level of current use becomes “incompatible”; how to limit uses in response to declining resource conditions; and in any given determination, how to make these decisions in a credible, informed, and transparent way that managers and the public can clearly understand.

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*Marine Sanctuaries Act*, 34 ELR 10,505, 10,509 (2004).

18. 16 U.S.C. § 1431(a) (2000) (emphasis added).

19. *Id.* § 1431(b) (emphasis added).

20. *Id.* § 1431(b)(6) (emphasis added).

21. Chandler & Gillelan, *supra* note 17, at 10,506.

## II. STELLWAGEN BANK NATIONAL MARINE SANCTUARY AND “COMPATIBILITY DETERMINATION”

One sanctuary recently undertook an examination of how the compatibility language in the Sanctuaries Act could be interpreted and applied in management decisions in the course of reviewing its management plan (such reviews are required by the Sanctuaries Act every five years).<sup>22</sup> The Stellwagen Bank National Marine Sanctuary (SBNMS or Sanctuary), located off the Massachusetts coast, solicited public comments on management issues and used these comments to develop recommendations for changes in site management. In addition to marine mammal protection, ecosystem alteration, and water quality, the public commented on the compatibility determination language in the Sanctuaries Act and how it applies to SBNMS’s management. Many comments stated that the Sanctuary’s primary objective is resource protection, that human uses must be conducted within the context of that objective, and raised issues regarding human use impacts on Sanctuary resources. Commenters also stated that the Sanctuary needed some method to assess the risks to resources caused by “human uses and their cumulative impacts,” and that such a method should be in accord with the Sanctuary’s vision and mission.<sup>23</sup> The SBNMS citizen Sanctuary Advisory Council then formed several working groups, chaired by Advisory Council members and consisting of representative stakeholders from the SBNMS community, to provide the Sanctuary with advice on how to address the issues raised by the public regarding future management.

The Compatibility Determination Working Group (CDWG) was comprised of representatives from shipping, fishing, and whale watching industries, conservation organizations, and federal agencies, as well as academic experts on marine policy, law, and economics. The CDWG met five times over the course of four months in 2005, and worked to achieve all decisions by consensus. As with all other SBNMS stakeholder working groups, the CDWG’s final recommendations were submitted to the entire Sanctuary Advisory Council for its review and vote, and then submitted to

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22. Sanctuaries Act, *supra* note 18, § 1434(e).

23. GERRY E. STUDDS STELLWAGEN BANK NATIONAL MARINE SANCTUARY, COMPATIBILITY DETERMINATION ACTION PLAN, CD-1 (June 9, 2005), *available at* [http://www.sbnms.nos.noaa.gov/management/workinggroups/wgpdf/CD\\_AP\\_06\\_01\\_2005.pdf](http://www.sbnms.nos.noaa.gov/management/workinggroups/wgpdf/CD_AP_06_01_2005.pdf). Note: The work of this Working Group and the resultant Action Plan will be incorporated throughout this Article, primarily derived from the Author’s participation chairing the group and drafting the Action Plan. Citations to the Plan are not utilized for the author’s first-hand account of the Group’s process. The Plan is cited when referring to specific content and to credit other work incorporated within the Plan.

the Sanctuary Superintendent for his consideration in drafting the new management plan.

In consultation with Sanctuary staff, the CDWG first determined that the scope of its work should not include any determination of whether a specific use, current or future, was or was not “compatible” in the Sanctuary. Rather, what was most needed was a method for the Sanctuary to use to make such determinations. Thus, at the first meeting, the CDWG adopted this goal statement: “To develop a framework to assess and evaluate whether existing or proposed human uses are compatible with the sanctuary’s primary objective of resource protection. . . .”<sup>24</sup>

The CDWG then reviewed the current status of compatibility determinations within the National Marine Sanctuary Program (NMSP) and other types of protected area programs. Currently in the NMSP, there are “no system-wide standards or framework to determine whether or not a use should be allowed if it has not already been categorically prohibited or restricted.”<sup>25</sup> The compatibility of uses at sanctuaries is determined on a case-by-case basis, using mechanisms such as Congress’s prohibition of activities during site designation or by other ruling, a site’s Designation Document, site-specific regulations, and the ability of a site with NMSP oversight to issue permits for specific activities.<sup>26</sup>

Other types of protected areas have developed methodologies for determining compatible activities. One process used by many agencies such as the U.S. National Park Service, the U.S. Forest Service and the Saba Conservation Foundation, is called “Limits of Acceptable Change” (LAC). LAC was developed in the 1980’s by the U.S. Forest Service as a tool to manage recreational uses and set standards for acceptable resource and social conditions in recreational areas, as opposed to methods of determining “carrying capacity” by deciding “how many is too many.”<sup>27</sup> The carrying capacity approach proved cumbersome for managers because natural resources are rarely impacted through straightforward cause-and-effect relationships, and attempting to determine a single number delineating an appropriate level of use out of the context of overall desired conditions proved difficult.<sup>28</sup> The LAC concept is based on accepting the

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24. *Id.* at CD-2.

25. *Id.* at CD-12, Appendix 1.

26. *Id.* at CD-12-14.

27. *Id.* at CD-15-16.

28. GEORGE H. STANKEY, STEPHEN F. MCCOOL & GERALD L. STOKES, LIMITS OF ACCEPTABLE CHANGE: A NEW FRAMEWORK FOR MANAGING THE BOB MARSHALL WILDERNESS COMPLEX (1984), available at <http://www.cfc.umt.edu/academics/Courses/Capstone/Syllabi/RECM%20485/stankey%20and%20others.doc>.



fact that change is an inevitable result of use; instead of asking “how much use is too much,” a manager using an LAC approach asks “how much change in conditions is acceptable.”<sup>29</sup>

The LAC process works to resolve competing or conflicting management goals, such as recreational access and resource protection, by first determining what the “acceptable” conditions are in a site, then analyzing how management actions can be used to achieve or maintain those conditions. For example, in a terrestrial site such as a national wilderness area, the ideal conditions could be maintaining sufficient natural resource protection while accommodating wilderness recreational activities. Related management actions could be adjusting the number of campsites based upon the sensitivity of habitats and the proximity of campsites to each other.<sup>30</sup> In a tropical MPA, such as Saba Marine Park in the Caribbean, the desired conditions could be maintaining healthy coral reefs while providing recreational diver access. Concerns about coral damage caused by divers could then lead to management actions regarding diver buoyancy control.<sup>31</sup>

The CDWG also specifically examined how one federal agency makes compatibility determinations. The U.S. Fish and Wildlife Service has a well-established compatibility determination procedure to determine appropriate uses and levels of use within National Wildlife Refuges. This procedure is grounded in the Refuge System’s governing laws and regulations, which state that wildlife protection comes first and define which wildlife-dependent public uses are allowed (other uses are generally prohibited unless specifically permitted by the refuge manager). The Refuge System’s laws and regulations also define compatible use as “a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the [Refuge System’s] mission or the purpose of the national wildlife refuge.”<sup>32</sup> When a use is proposed for a particular refuge, the U.S. Fish and Wildlife Service uses a series of dichotomous steps to arrive at a compatibility determination by asking questions such as, “[d]oes the use conflict with any refuge goal or objective? [If] yes—use is denied; [if] no—go to [next] step.”<sup>33</sup>

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29. *Id.* at 24.

30. GERRY E. STUDDS STELLWAGEN BANK NATIONAL MARINE SANCTUARY, *supra* note 23, at CD-24 to -25.

31. *Assessing the Carrying Capacity of MPAs: How Many Visitors Can Your MPA Hold?*, 6:2 MPA NEWS (Aug. 2004), <http://depts.washington.edu/mpanews/MPA55.htm>.

32. GERRY E. STUDDS STELLWAGEN BANK NATIONAL MARINE SANCTUARY, *supra* note 23, at CD-17 (citing 65 Fed. Reg. 62486, Oct. 18, 2000).

33. *Id.* at CD-18.

The CDWG then considered the applicability of both the LAC concept and the U.S. Fish and Wildlife Service's approach to sanctuary management. The group found that LAC provided a broad, conceptual means to develop a clear, justifiable process for making compatible use decisions. The group noted, however, that some of LAC's assumptions regarding the inevitability of impact from use may not apply to SBNMS where a management goal to protect or restore resources or ecological systems could result in a strict limitation on use, such that no impacts from use are experienced.<sup>34</sup> Similarly, the group found that the U.S. Fish and Wildlife Service's compatibility determination process provided a more formulaic approach than LAC, and the question-answer screening tool could be useful to SBNMS, but noted significant differences between the Refuge System and national marine sanctuaries. For example, the Refuge System compatibility determination protocol was developed based on specific legislative language, regulatory definitions, and court decisions that clarified the purpose of refuges, the types of appropriate uses contemplated, and articulated a compatibility determination process to follow. Refuges are presumed "closed to uses, unless specifically opened," and are terrestrial sites owned in fee simple by the government.<sup>35</sup> In contrast, there is little guidance in the Sanctuaries Act, regulations, or other applicable authority, to clarify the protection-use tension inherent in that law's compatibility language. Sanctuaries are presumed open to use unless activities are specifically limited by regulations or a site's designation document, and are held by the government as trustee of these public trust resources comprised of submerged public lands and the water column above.<sup>36</sup>

The CDWG then reviewed the relevant legal authority that could provide information on how to construct a "compatibility determination framework" for SBNMS.<sup>37</sup> After examining both the LAC concept and the U.S. Fish and Wildlife Service process, it became clear to the group that any methodology for SBNMS needed to be based on the guidance provided by existing legal authority regarding SBNMS's purpose and the types of uses contemplated within its boundaries.<sup>38</sup> The group reviewed the Sanctuaries Act, "implementing regulations applicable to all sanctuaries as well as [regulations] specific to [SBNMS], the SBNMS designation

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34. *Id.* at CD-3.

35. *Id.* at CD-3 to -4.

36. *Id.*

37. GERRY E. STUDDS STELLWAGEN BANK NATIONAL MARINE SANCTUARY, *supra* note 23, at CD-4.

38. *Id.*

document, and the current 1993 Management Plan.”<sup>39</sup> These sources revealed numerous references to resource protection as well as use; certain uses that are considered per se “incompatible”<sup>40</sup> in the Sanctuary such as industrial extraction of materials such as gravel or oil and gas; and certain uses that are currently not listed as subject to Sanctuary regulation, such as fishing, and hence not limited.<sup>41</sup>

### III. GROUP CONCLUSIONS AND PRODUCTS

The CDWG developed and approved by consensus an Action Plan which documented its deliberations and included its proposal for a framework that could be used at SBNMS, calling it “S-CAP” (Sanctuary Compatibility Analysis Process).<sup>42</sup> The group found that the Sanctuary needs a hierarchal process to determine compatible uses similar to applications of LAC theory by different agencies or the method used by the U.S. Fish and Wildlife Service, i.e. a process where the site’s overarching “vision” or “mission” flows down into more specific management goals and objectives.<sup>43</sup> Such a hierarchal structure provides a firm basis for managers to analyze and determine whether a use is compatible with the site’s vision, mission, and management goals and objectives.<sup>44</sup> The CDWG also noted that S-CAP should be grounded in existing authority, and should clearly state the roles of management and the public as well as provide opportunities for public participation.<sup>45</sup>

To illustrate how S-CAP would assist the Sanctuary in determining compatible uses, a hypothetical new use in the Sanctuary (jetski operation) and its effect on the Sanctuary’s marine mammal populations was considered:

*Issue:* Do jetskis in the sanctuary harm whales? Is it a use compatible with site’s purpose?  
*Vision:* Healthy animal populations  
*Mission:* Resource protection  
*Goal:* Protect assemblages of marine mammals

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39. *Id.*

40. *Id.*

41. *Id.* CD-27 to -29 Appendix III.

42. GERRY E. STUDDS STELLWAGEN BANK NATIONAL MARINE SANCTUARY, *supra* note 23, at CD-5.

43. *Id.* at CD-4 to -5.

44. *Id.* at CD-5.

45. *Id.*

*Objective:* To strengthen the protection of marine mammals by assessing and minimizing behavioral disturbance including vessel strikes to marine mammals, and by fostering cooperation with cross-jurisdictional partners that affects marine mammals.

*Standard:* Marine mammal behavior is not altered nor are they struck by vessels

*Indicators that standard is being achieved:*

- No marine mammals are struck by jetskis
- No change in marine mammal distribution due to jetskis
- Surface-to-dive time ratio for marine mammals is within normal range and unaffected by jetskis
- Marine mammal communication is unimpeded by jetski noise.<sup>46</sup>

By utilizing clearly articulated vision, mission, and goal statements and accompanying indicators to assess the impact of jetskis on marine mammals, the Sanctuary could make a decision about this use in a transparent and defensible manner. The public could then readily understand the Sanctuary's basis for their decision, whether the end result is banning jetskis altogether, limiting numbers of jetskis, restricting their use to certain times or locations, or allowing unlimited use.

The CDWG concluded that in order to effectively develop S-CAP, "it is critical that SBNMS's overarching vision be clearly defined as soon as possible" and included in the draft management plan so the public has an opportunity to comment on it.<sup>47</sup> To enable stakeholder acceptance of the compatibility process, the CDWG called on both Sanctuary managers and stakeholders to participate in developing a vision.<sup>48</sup> No public discussion of the Sanctuary's vision has been held since the initial hearings for the site's designation, which focused primarily on preventing proposed offshore gravel mining and casino activities.

The CDWG's Action Plan was unanimously approved by the Stellwagen Sanctuary Advisory Council and then passed on to the Sanctuary for inclusion in the Draft Management Plan (proposed release in winter 2007 for public comment). One month after the acceptance of the Action Plan, the Advisory Council held a daylong facilitated meeting in July, 2005 to determine a vision statement for the Sanctuary. This statement, unanimously approved by the Council, will be included in the Draft Management Plan for public comment:

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46. *Id.* at CD-8.

47. *Id.* at CD-5.

48. *Id.*

The Stellwagen Bank National Marine Sanctuary is teeming with a great diversity and abundance of marine plants and animals supported by diverse, healthy habitats in clean ocean waters. The ecological integrity of the sanctuary is protected and fully restored for current and future generations. Human uses are diverse and compatible with maintaining natural and cultural resources.<sup>49</sup>

#### IV. CONCLUSION

There is little question that better management of our ocean and coastal resources will remain an urgent concern in the foreseeable future. As our interest in using ocean resources and our access to them increases, management needs correspondingly increase both in number and complexity. From state to regional to federal initiatives, there is broad agreement that a shift towards ecosystem-based management is needed for the long-term health of our oceans, although how to implement such a management approach is yet to be determined. MPAs such as our national marine sanctuaries have an important role in improved, sustainable management of coastal and marine resources, but incorporating sanctuaries in ecosystem-based management will remain difficult as long as the essential identity of these sites is not clearly defined and generally understood. The identity of a protected area is for many stakeholders encapsulated in the basic questions triggered by a protected area boundary. For the public, the question is, “what can I do there?”; for the manager, the question is, “what should be allowed and how much of it?”

The Sanctuaries Act is one of many federal statutes that establish MPAs. While other laws focus on specific activities or species, such as commercial fishing or marine mammals, the Sanctuaries Act is the only one mandating protection of all resources within its boundaries. However, the Act contains many features that have made it difficult to apply; such difficulties will only continue in movements toward a revised system of ecosystem-based management. The Act’s conflicting language regarding simultaneous protection and use of sanctuary resources reflects its contentious legislative history. The Act itself may never be amended to state more definitively the legislative purpose of these sites.

Yet the “compatibility” language of the Act provides an immediate means to clarify what can take place in sanctuaries and establishes a firmer

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49. SBNMS 16th Sanctuary Advisory Council, Meeting Minutes 18 (July 11, 2005), available at [http://stellwagen.noaa.gov/management/sac/16th\\_SAC\\_Meeting.pdf](http://stellwagen.noaa.gov/management/sac/16th_SAC_Meeting.pdf).

identity for these ocean places. The Stellwagen CDWG's work examining this language and how it should be applied illustrates key techniques for future management of national marine sanctuaries and other types of MPAs. First, the current ad hoc means of compatibility determination used by sanctuaries only reinforces the lack of a clear vision and understanding by the public regarding what a sanctuary is supposed to be. Second, well-established methods utilized by other agencies (such as LAC or the U.S. Fish and Wildlife Service Refuge System) to make compatibility determinations can be considered for their applicability to the marine environment and sanctuaries. Third, a clear articulation of the purpose or "vision" of a sanctuary grounded in legal authority is a required component in any method to determine compatible uses; additionally, the process of determining a sanctuary's vision is an excellent means to engage stakeholders in sanctuary management outside of sectarian debates. Finally, the sanctuary system should consider developing system-wide guidance for compatibility determination at all sites or, alternatively, a protocol that individual sites can utilize in developing their own compatibility determination methods so the role of sanctuaries is consistent among marine protected areas and within the evolving management of ocean resources.

It is broadly acknowledged that effective management of MPAs is an important key to their success in a natural resource management regime. Sanctuaries can be more effectively managed, and public acceptance and understanding of these sites enhanced, by focused utilization of the "compatibility" portion of the Sanctuaries Act to clearly articulate appropriate public uses of sanctuary resources.