

Calendar No. 228

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-114

BATTLE OF MIDWAY NATIONAL MEMORIAL ACT

OCTOBER 28, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 940]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 940) to provide for a study of the establishment of Midway Atoll as a national memorial to the Battle of Midway, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited the “Battle of Midway National Memorial Study Act”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) September 2, 1997, marked the 52nd anniversary of the United States victory over Japan in World War II.

(2) The Battle of Midway proved to be the turning point in the war in the Pacific, as United States Navy forces inflicted such severe losses on the Imperial Japanese Navy during the battle that the Imperial Japanese Navy never again took the offensive against the United States or the allied forces.

(3) During the Battle of Midway on June 4, 1942, an outnumbered force of the United States Navy, consisting of 29 ships and other units of the Armed Forces under the command of Admiral Nimitz and Admiral Spruance, out-maneuvered and out-fought 350 ships of the Imperial Japanese Navy.

(4) It is in the public interest to study whether Midway Atoll should be established as a national memorial to the Battle of Midway to express the enduring gratitude of the American people for victory in the battle and to inspire future generations of Americans with the heroism and sacrifice of the members of the Armed Forces who achieved that victory.

(5) The historic structures and facilities on Midway Atoll should be protected and maintained.

SEC. 3. PURPOSE.

The purpose of this Act shall be to require a study of the feasibility and suitability of designating the Midway Atoll as a National Memorial to the Battle of Midway within the boundaries of the Midway Atoll National Wildlife Refuge. The study of the Midway Atoll and its environs shall include, but not be limited to, identification of interpretative opportunities for the educational and inspirational benefit of present and future generations, and of the unique and significant circumstances involving the defense of the island by the United States in World War II and the Battle of Midway.

SEC. 4. STUDY OF THE ESTABLISHMENT OF MIDWAY ATOLL AS A NATIONAL MEMORIAL TO THE BATTLE OF MIDWAY.

(a) **IN GENERAL.**—Not later than six months after the date of enactment of this Act, the Secretary of the Interior shall, acting through the Director of the National Park Service and in consultation with the Director of the United States Fish and Wildlife Service, the International Midway Memorial Foundation, Inc. (hereafter referred to as the “Foundation”), and Midway Phoenix Corporation, carry out a study of the suitability and feasibility of establishing Midway Atoll as a national memorial to the Battle of Midway.

(b) **CONSIDERATIONS.**—In studying the establishment of Midway Atoll as a national memorial to the Battle of Midway under subsection (a), the Secretary shall address the following:

(1) The appropriate federal agency to manage such a memorial, and whether and under what conditions, to lease or otherwise allow the Foundation or another appropriate entity to administer, maintain, and fully utilize the lands (including any equipment, facilities, infrastructure, and other improvements) and waters of Midway Atoll if designated as a national memorial.

(2) Whether designation as a national memorial would conflict with current management of Midway Atoll as a wildlife refuge and whether, and under what circumstances, the needs and requirements of the wildlife refuge should take precedence over the needs and requirements of a national memorial on Midway Atoll.

(3) Whether, and under what conditions, to permit the use of the facilities on Sand Island for purposes other than a wildlife refuge or a national memorial.

(4) Whether to impose conditions on public access to Midway Atoll if designated as a national memorial.

(c) **REPORT.**—Upon completion of the study required under subsection (a), the Secretary shall submit, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives, a report on the study, which shall include any recommendations for further legislative action. The report shall also include an inventory of all known past and present facilities and structures of historical significance on Midway Atoll and its environs. The report shall include a description of each historic facility and structure and a discussion of how each will contribute to the designation and interpretation of the proposed national memorial.

SEC. 5. CONTINUING DISCUSSIONS.

Nothing in this Act shall be construed to delay or prohibit discussions between the Foundation and the United States Fish and Wildlife Service or any other government entity regarding the future role of the Foundation on Midway Atoll.

PURPOSE OF THE MEASURE

The purpose of S. 940, to provide for a study of the establishment of Midway Atoll as a national memorial to the Battle of Midway.

BACKGROUND AND NEED

The U.S. Fish and Wildlife Service Refuge at Midway is composed of about 88,548 acres of submerged lands and two major coral islands that total about 1,550 acres: Eastern Island and Sand Island. Eastern Island is roughly triangular in shape and is 1.3 miles long and about 0.8 mile at its widest extent. Sand Island is larger, measuring approximately 1 mile wide and 2 miles long. Sand Island is the location of most of the facilities on the atoll. Eastern Island is the location of the airstrip.

The Midway Islands are located in the North Pacific Ocean, about one-third of the way from Honolulu to Tokyo. The comparative land mass of the Midway Islands is about nine times the size of the Mall in Washington, DC. The island climate is tropical, but is moderated by easterly winds. The group of atolls is approximately 1,150 miles northwest of Honolulu, Hawaii. Midway is the only collection of atolls in the Hawaiian Archipelago that are not within the State of Hawaii.

Midway was discovered by an American sea captain in 1859, U.S. Navy Captain William Reynolds took formal possession of Midway for the United States in 1867. In 1903 a commercial telegraph cable was laid across the Pacific which led to the occupation of the islands. That same year, President Theodore Roosevelt issued an executive order placing the U.S. Navy in charge of the islands. The Commercial Pacific Cable Company established a communication station on Sand Island, planted grass and trees to cut down on sand storms and sun glare and built four principle buildings. Those buildings exist today, abandoned and deteriorating. A detachment of 20 Marines was deployed on Midway to thwart Japanese bird feather poachers in 1904.

In 1935 Pan American Airways established weekly commercial flights across the Pacific and moved on to Sand Island, building a small hotel and flight facilities. In 1938, Congress, in support of this commercial enterprise, authorized the Army Corps of Engineers to dredge an entrance channel, a harbor and seaplane runways. This work was completed in 1940, when the Navy took over at Midway.

In September of 1940 a detachment of Marines from the 3d Defense Battalion arrived on Midway and began building defenses to support the work of the Navy which was establishing a forward position for two patrol squadrons of seaplanes on Sand Island. Civilian employees were beginning to build a land-based airstrip on Eastern Island.

On December 7, 1941, the same day as the Pearl Harbor attack on the Pacific Fleet, two Japanese destroyers attacked Midway, setting fire to a seaplane hanger, hitting the power plant, the Pan Am radio facility and other facilities on the island. Marines returned fire from their coastal batteries. While they believed they hit both vessels, damage was apparently negligible and they were able to return to port in Japan safely.

After breaking Japan's communication codes, the Pacific Fleet learned of Japan's plan to launch a raid on Midway in the Spring of 1942. Based on this information and the strategic importance of the Midway group, Admiral Nimitz authorized reinforcement of the island's coastal defenses—adding more gun placements and reinforced magazines for ammunition.

Additional aircraft were sent to the island including: 32 PBY's, 6 avengers, 4 B-26 and 13 B-17 bombers and two squadrons of Marine Corps fighters. Two companies of marines arrived to reinforce the defense battalion.

On June 4, 1942, the Japanese attacked Midway with 108 aircraft at dawn. After the first raid, the Japanese planes returned to their carriers to rearm and were caught by surprise on the carrier decks by American carrier aircraft from Admiral Nimitz' fleet.

Historians have ranked the Battle of Midway as one of the most decisive naval battles of all time. During the month of June 1942, a badly outnumbered American naval force, consisting of 29 ships and other units of the armed forces, under the overall command of Admiral Nimitz, outmaneuvered and out-fought 350 ships of the combined Japanese Imperial Fleet. The objectives of the Japanese high command were to occupy the Midway Islands and destroy the United States Pacific Fleet, but the forces under the command of Admiral Nimitz completely thwarted the Japanese strategy. Victory at Midway is considered the turning point in the World War II Pacific Theater.

The United States lost 163 aircraft compared to 286 Japanese aircraft loss at Midway. One American Aircraft carrier, U.S.S. *Yorktown*, and one destroyer, U.S.S. *Humman*, were destroyed. On the other hand, the Japanese Navy lost five ships, including four of the Imperial Navy's main aircraft carriers. Almost as devastating was the loss of most of the experienced Japanese pilots. At the end of the battle, 307 Americans had lost their lives. The Japanese lost 2,500 men. The damage inflicted on the Imperial Japanese Navy by American airmen and sailors was so severe that Japan never again was able to take the offensive against the United States Allied forces.

The study proposed in this measure would analyze the issues attendant to establishing a memorial on Midway including the protection and interpretation of the features, ruins and artifacts reflective of the activity surrounding the Battle of Midway.

In addition to their military-historical significance, the Midway Islands provide land habitat and the nesting site for more than 2 million birds, including 15 species of seabirds. The islands are also home to several endangered species, such as the Hawaiian monk seal and the green sea turtle.

Midway was under the jurisdiction of the U.S. Navy for the decades following 1903, but transferred to the jurisdiction of the Secretary of the Interior by Executive Order in October of 1996. The Navy completed environmental cleanup and left the atoll June 30, 1997. Midway Atoll National Wildlife refuge was originally established as an "overall" refuge in 1988, pursuant to an agreement between the Fish and Wildlife Service and the Navy. An overlay refuge is a situation where another agency owns land in fee title (in this case the Navy), but the Fish and Wildlife Service maintains a refuge for protection of wildlife over the other agency's land or water. On July 1, 1997, the Fish and Wildlife Service received fee title over the refuge at Midway. The Fish and Wildlife Service is also responsible for the underwater resources surrounding the atoll.

LEGISLATIVE HISTORY

S. 940 was introduced June 19, 1997 by Senators Helms, Akaka, Lott, McCain and Murkowski and was referred to the Committee on Energy and Natural Resources. The Subcommittee on National Parks, Historical Preservation and Recreation held a hearing on S. 940 on October 1, 1997.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business on October 22, 1997, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 940, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 940, the Committee adopted an amendment in the nature of a substitution which would modify section 3 to clarify the purpose of the study to determine the suitability and feasibility of establishing a memorial to the Battle of Midway and requires the study to include, but not be limited to identifying interpretative and educational opportunities relating to the historical battle.

The amendment also changes the short title from "Battle of Midway National Memorial Act" to the "Battle of Midway National Memorial Study Act."

During the discussion on the amendment, the Committee pointed out that there are volumes of material already written on the Battle of Midway which, for the purposes of the study directed by this legislation need not be duplicated. The Committee encourages the U.S. Fish and Wildlife Service and the National Park Service to accomplish the study in the most cost-effective manner.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Battle of Midway National Memorial Study Act".

Section 2 sets forth Congressional findings as to the historic significance of the Battle of Midway and that it is in the public interest to study whether a national memorial to the memory and heroism of those involved in the battle should be established and that the historic structures and facilities on Midway Atoll should be protected and maintained.

Section 3 states that the purpose of this Act is to require a feasibility and suitability study of designating the Midway Atoll within the boundaries of the Midway Atoll National Wildlife Refuge as a National Memorial to the Battle of Midway, a study which shall include, but not be limited to the identification of interpretive opportunities that will educate and inspire current and future generations and interpretation of the unique and significant circumstances involved in the Battle of Midway.

Section 4(a) directs the Secretary of the Interior (Secretary) to work through the Director of the National Park Service (Director NPS) and the Director of the Fish and Wildlife Service (Director F&WS) and the International Midway Memorial Foundation, Inc. (Foundation) and the Midway Phoenix Corporation to study the feasibility and advisability of establishing Midway Atoll as a national memorial to the Battle of Midway.

Section 4(b) directs the Secretary to make the considerations in the following four paragraphs in the course of the study directed in Section 4(a):

Paragraph (b)(1) directs that the study determine the appropriate agency to manage the proposed memorial and to administer,

maintain or utilize the lands, facilities, infrastructure and other improvements associated with a memorial on lands and waters of Midway Atoll.

Paragraph (b)(2) directs that the study determine whether a memorial would conflict with management of the Midway Atoll as a refuge and under what circumstances the needs and requirements of the wildlife refuge should take precedence over the needs of a national memorial.

Paragraph (b)(3) directs that the study determine whether and under what conditions uses should be permitted on Sand Island for uses other than as a refuge or national memorial.

Paragraph (b)(4) directs that the study determine whether to impose conditions on public access to Midway Atoll.

Section 4(c) directs the Secretary, upon completion of the study, to submit a report to Congress with recommendations for any future legislative action and including an inventory of all past and present structures of historical interest on Midway Atoll and how each would contribute to the proposed memorial.

Section 5 states that nothing in this Act should inhibit discussions between the Foundation and the U.S. Fish and Wildlife Service or other government agency regarding the future role of the Foundation on Midway Atoll.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time this report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 940. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 940, as ordered reported.

EXECUTIVE COMMUNICATIONS

On October 24, 1997, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 940. These reports had not been received at the time the report on S. 940 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF JOHN ROGERS, DEPUTY DIRECTOR, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to provide testimony on S. 940, a bill which would require the Secretary of the Interior to conduct a study of the feasibility and advisability of designating Midway Atoll National Wildlife Refuge as a national memorial to commemorate the Battle of Midway.

The Fish and Wildlife Service fully appreciates the historical importance of Midway Atoll to the nation and is committed to protecting the atoll's outstanding historic sites and provide access and interpretive programs for the public. We recognize the key role that Midway played in World War II and the country's maritime history.

We fully support the designation of Midway Atoll as a national memorial. In fact, it is our view that Midway's outstanding history has been sufficiently documented to warrant designation by Congress as a national memorial without further study. We would support a bill which designates a national memorial on the Midway Atoll National Wildlife Refuge to be managed by the United States Fish and Wildlife Service. We would be happy to work with the Committee on revisions to the bill that would support this designation.

S. 940 requires the completion of a study within 6 months to determine the appropriate role of the International Midway Memorial Foundation (Foundation) or another entity on Midway and to address issues involving access to and use of its historic resources. It further requires the Secretary of the Interior to submit a report to Congress with recommendations for additional legislative action upon completion of this study. The Service believes that the various issues covered under Section 4 of the bill have been or are in the process of being addressed, thereby making this study unnecessary for the following reasons:

The history of Midway has been studied and documented extensively. In addition to numerous fine books and publications on the significance of the Battle of Midway, the National Park Service completed a special study of the atoll in 1986 which resulted in the designation of a National Historic Landmark encompassing certain resources.

In recent years, the Department of the Navy completed additional surveys and studies of Midway to identify other important historic properties that would be affected by the base realignment and closure process. The Fish and Wildlife Service has also just completed its 1997 annual report documenting the general condition and restoration needs of identified sites. I have a copy here for your review and would like to include this exhibit as part of the hearing record.

In 1996, the Service, Navy, and Advisory Council on Historic Preservation executed a Programmatic Agreement

under the National Historic Preservation Act of 1966, as amended, to ensure that historic properties on Midway would be sufficiently protected during the base realignment and closure process. This agreement which I would like to include as part of the hearing record, requires the Service to prepare a historic preservation plan by 1998 to address, among other things, the use and access issues identified in S. 940. The Fish and Wildlife Service will consult with the National Park Service in completion of this plan.

This plan will be used to examine the current boundaries of the National Historic Landmark to determine its accuracy and offer recommendations to the National Park Service for any necessary revisions; examine alternatives for the appropriate use of and access to Midway's historic resources by the public; and establish management priorities and specific actions needed for protecting the atoll's historic sites. The historic preservation plan will be subject to public review and comment to ensure that the broad diversity of interests related to Midway's wildlife, historic resources, public access, and interpretation are sufficiently addressed.

Before Midway was fully transferred to the Service in 1997, we recognized the need for seeking the assistance of qualified organizations to help manage Midway's outstanding wildlife and historic resources. To help meet this need, the Service signed a long-term contract with the Midway-Phoenix Corporation to manage many of the atoll's buildings, infrastructure, and offer support for a public use program.

Through this agreement, the day-to-day responsibility for managing facilities, some of which include historic buildings, has been divided between the Service and Midway-Phoenix Corporation. In turn, Midway-Phoenix Corporation has subcontracted to other companies to provide services such as wildlife interpretation, fishing charters, diving charters, and other programs. While the Service has already initiated a limited program to interpret Midway's history, we are actively seeking out other partners, including the Foundation, to expand and enhance historic interpretative services and restoration of important sites.

The Service is pleased with the support and enthusiasm offered by the Foundation. This past June, representatives from Foundation, the Fish and Wildlife Service, National Park Service, and Midway-Phoenix met on Midway to review the status of the atoll's historic resources. This meeting was very productive in terms of identifying areas of common concern affecting Midway's historic sites and identifying follow-up activities.

Representatives from the Service, the Foundation, and Midway-Phoenix plan to meet again next week to continue discussions on Foundation's involvement. It is the Service's objective to develop an agreement with the Foundation that formalizes its role in assisting the Service to protect

and interpret historic sites. We are confident that this will be accomplished in the near future.

We are also confident that establishing a national memorial would be beneficial to the atoll's historic resources by drawing greater attention and support for preserving and interpreting Midway's unique legacy. The Service has the necessary experience to manage a national memorial and has already demonstrated a commitment to protecting Midway's historic resources.

The potential for realizing all of these activities is primarily limited only by available finances and manpower. The Service believes that increasing the recognition of Midway's unique and colorful history will help attract the public to the refuge and thus partially contribute to the maintenance of facilities, infrastructure, and services required to support wildlife conservation, a viable public use program, and historic preservation objectives.

The Service realizes that balancing the protection of Midway's wildlife and history, while encouraging reasonable public access, will require careful planning. We are committed to working with the National Park Service and other interested parties, including the Foundation over the next year to develop a balanced program that addresses the various management issues involving Midway's historic resources in a manner that is compatible with the refuge's mission and purposes.

Thank you for the opportunity to testify on S. 940. I would be pleased to respond to any questions that you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 940 as reported.

