



[Billing Code 3510-NK-P]

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 922**

[Docket No. 130405334-3334-01]

RIN 0648-BD20

### **Re-establishing the Sanctuary Nomination Process**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** NOAA's ONMS is announcing that it is re-establishing the sanctuary nomination process and is proposing to amend its regulations governing the process for nominating and evaluating sites for eligibility as a national marine sanctuary. This action would replace the currently inactive Sanctuary Evaluation List (SEL) with a new process for local communities and other interested parties to provide NOAA with robust, criteria-driven proposals for new national marine sanctuaries. To implement this process, NOAA is seeking public comment on proposed changes to the sanctuary nomination and designation procedures, and on the criteria by which the agency would analyze nominations for potential new national marine sanctuaries. Once these criteria have been made final, NOAA intends to solicit nominations for areas of the marine and Great Lakes environments that satisfy those criteria for possible designation as a national marine sanctuary.

**DATES:** Comments on this proposed rule must be received no later than **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by RIN 0648-BD20, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0091](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0091), click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

- **Mail:** Matt Brookhart, Chief, Policy & Planning Division, Office of National Marine Sanctuaries, 1305 East-West Highway, 11<sup>th</sup> floor, Silver Spring, MD 20910.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. ONMS will accept anonymous comments (for electronic comments submitted through the Federal eRulemaking Portal, enter N/A in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Matt Brookhart, Chief, Policy & Planning Division, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11<sup>th</sup> floor, Silver Spring, MD 20910, (301) 713-7247.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access:**

This Federal Register document is also accessible via the Internet at

<http://www.access.gpo.gov/su-docs/aces/aces140.html>.

## **I. Background**

The National Marine Sanctuaries Act (NMSA or Act, 16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to, among other things, identify and designate as national marine sanctuaries areas of the marine environment, including the Great Lakes, which are of special national significance; to manage these areas as the National Marine Sanctuary System (NMSS); and to provide for the comprehensive and coordinated conservation and management of these areas and the activities affecting them in a manner which complements existing regulatory authorities. Section 1433 of the NMSA provides sanctuary designation standards and factors to consider in determining whether an area qualifies for consideration as a potential sanctuary, and section 1434 establishes procedures for sanctuary designation and implementation. Day-to-day management of the NMSS has been delegated by the Secretary to the ONMS. Regulations implementing the NMSA and each sanctuary are codified in Title 15 Part 922 of the Code of Federal Regulations (CFR).

NOAA first developed a formal process for identifying and evaluating sites for consideration as potential national marine sanctuaries in the late 1970s. In 1983, NOAA replaced this process with the Site Evaluation List (SEL) (48 FR 24295). As described in NOAA regulations at 15 CFR 922.3, the SEL was a list of natural and historical marine resource sites selected by the Secretary as qualifying for further evaluation for possible designation as national marine sanctuaries. The SEL included detailed criteria, relied on regional review panels, and was intended to be reviewed and updated every five years. When it was published in 1983, the SEL included 29 sites (48 FR 35568), four of which were subsequently designated as

sanctuaries: Flower Garden Banks (1991), Stellwagen Bank (1992), Western Washington Outer Coast (renamed Olympic Coast, 1994), and Thunder Bay (2000) national marine sanctuaries (NMS). The list of sites on the SEL can be found at

[http://sanctuaries.noaa.gov/management/fr/54\\_fr\\_53432.pdf](http://sanctuaries.noaa.gov/management/fr/54_fr_53432.pdf).

When the SEL was established, the criteria for nominating sites to the list focused primarily on the natural resource qualities that made an area eligible for sanctuary designation. The Marine Sanctuaries Amendments Act of 1984 (Pub. L. No. 98-496) added historical, research and educational qualities to the list of designation criteria. In 1988, NOAA issued a final rule (53 FR 43801) reflecting these amendments and, in 1989, announced that it would consider new sites for the SEL consistent with these revised criteria (54 FR 53432).

In 1995, the ONMS Director deactivated the SEL (60 FR 66875) to focus on management of the existing sanctuaries, which at that time there were a total of twelve national marine sanctuaries. Since then, only one national marine sanctuary, Thunder Bay National Marine Sanctuary, has been added to the NMSS. Public interest in the designation of new national marine sanctuaries has, however, remained strong. A variety of individuals, local, state, and tribal governments, academic institutions, citizen groups, and non-government organizations from coastal communities around the country have requested NOAA, the Department of Commerce, and the President to consider designating additional sanctuaries. These requests often reference the many and diverse benefits that coastal communities realize from an adjacent national marine sanctuary, including, but not limited to: meaningful protection of nationally significant marine resources; significant social and economic benefits from expanded travel, tourism, and recreation, as well as ocean-related jobs; increased opportunity for, and access to, federal research focused on local marine resources; education programs to promote ocean

literacy, sustainable uses, and stewardship; and community-driven problem solving for a myriad of ocean issues.

## **II. Description of Action**

The purpose of this proposed rulemaking is to:

- 1) Provide public notice that NOAA is re-establishing the public process to nominate areas of the marine and Great Lakes environments for consideration as national marine sanctuaries;
- 2) Seek public comment on proposed changes to various sections of the ONMS regulations at 15 CFR 922; and
- 3) Seek public comment on the criteria and process NOAA proposes using to evaluate new sanctuary nominations.

This proposed rule proposes criteria, process, and regulatory changes necessary to provide the American public an opportunity to nominate marine areas that NOAA may consider for designation as a national marine sanctuary. This new sanctuary nomination process intends to focus on proposals generated and driven by local and regional community groups and coalitions. As such, it would replace the old SEL process - which tended towards an agency-driven, “top-down” approach - with a more grassroots, “bottom-up” approach to sanctuary nominations. NOAA is, therefore, proposing to remove all terminology referencing the SEL in order to ensure that the sanctuary nomination process ultimately implemented by NOAA is more community driven, open to public input and analysis, and that any sites ultimately designated as national marine sanctuaries have widespread community support. NOAA will begin accepting new

nominations following issuance of a final rule, which will be published after consideration of public comment on the proposed criteria and regulations below. NOAA is not accepting nominations for new national marine sanctuaries at this time, nor is it considering evaluation of sites from the deactivated SEL. If NOAA determines that a nominated site meets the final criteria, the agency may then choose to begin the public process for national marine sanctuary designation.

The public may re-nominate sites from the deactivated SEL, per the final evaluation criteria, and resubmit these areas for NOAA's consideration. The final criteria will be consistent with the existing standards in section 303(b) of the NMSA, but they may not mirror them exactly. In deciding to pursue an eligible site for designation, NOAA can, and will, contemplate additional criteria or clarifications of existing criteria, such as the ONMS' fiscal capability to manage any area as a national marine sanctuary. . Ultimately, the agency seeks to have the most robust means possible for designating areas of special national significance as new national marine sanctuaries.

### **III. Request for Public Comments**

NOAA requests public comment on: 1) the completeness and utility of the following twelve criteria for evaluating areas of the marine environment as possible new national marine sanctuaries; 2) NOAA's proposed process steps for receiving sanctuary nominations; and 3) proposed amendments to ONMS regulations.

#### Proposed Nomination Criteria

NOAA will analyze the comments on these criteria and any additional criteria proposed by the public and publish the final evaluation criteria in its final rule on this process. The twelve

criteria NOAA proposes to evaluate areas of the marine environment as possible new national marine sanctuaries are:

1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site.

2) The area's historical, cultural, archaeological, or paleontological significance.

3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education.

4) The present and potential activities that may adversely affect the significance, values, qualities, resources and uses identified above.

5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the NMSA.

6) 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.

7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism.

8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development.

9) The socioeconomic effects of sanctuary designation.

10) The area's scientific value and value for monitoring the resources and natural processes that occur there.

11) The feasibility of employing innovative management approaches to protect sanctuary resources or to manage compatible uses.

12) The value of the area as an addition to the System.

### Proposed Sanctuary Nomination Process

As part of the new sanctuary nomination process, NOAA is contemplating the following procedures and protocols:

- 1) A nomination must have broad community support, including a combination of such entities as local government organizations, elected officials, tribes, stakeholder groups (e.g., industry or non-governmental organizations), or academia.
- 2) In nominating an area for national marine sanctuary consideration, a coalition of advocates should strive to provide documentation and/or analyses that address as many of the final evaluation criteria as possible. (NOAA will publish the final evaluation criteria in its final rule on this process.)
- 3) NOAA will maintain a publically transparent inventory on the ONMS website of those nominations that have successfully demonstrated eligibility for national marine sanctuary designation. These nominations would not automatically equate to sanctuary designation.
- 4) NOAA would implement any new sanctuary designation as a separate process from the nomination process, and under the highly participatory standards enacted by the NMSA and the National Environmental Policy Act (NEPA).



## Proposed Regulatory Amendments

In this rulemaking, NOAA proposes to revise 15 CFR 922.10 to codify a statement that NOAA is once again accepting nominations for national marine sanctuary designation. NOAA is also proposing to eliminate all regulations related to the SEL by removing 15 CFR sections 922.21 and 922.23, and removing SEL from the Definitions section at 15 CFR 922.3.

Note that, through a separate rulemaking action (78 FR 5998, January 28, 2013), NOAA is also proposing to revise regulations regarding the SEL as part of a comprehensive regulatory review pursuant to Executive Order 13563. NOAA will resolve any inconsistencies between these two rules in the respective final rules.

## **IV. Classification**

### A. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of this action, its purpose, and its legal basis are described in the preamble to this proposed rule and is not repeated here. The factual basis for this certification is as follows:

This rule proposes administrative changes to the regulations. The proposed action will only modify the procedural regulations to reactivate the sanctuary nomination process and set forth the nomination process and evaluation criteria for evaluating areas of the marine environment as possible new national marine sanctuaries.

The types of small entities that may be impacted by this rulemaking are local government organizations, tribes, stakeholder groups (e.g., industry or non-governmental organizations), or academia who wish to nominate areas of the marine environment for consideration as a national marine sanctuary. The agency, however, does not currently have data reflecting how many of these entities would submit nominations for possible designation as a new national marine sanctuary, but it anticipates that it would be a very small number. The impacts of this rulemaking would also be very small, as the proposed provisions merely set forth the proposed nomination process and evaluation criteria. The submission of nominations is purely voluntary, and this rulemaking does not impose any costs or requirements beyond those related to the preparation of documentation in support of the nomination. This action does not include any decisions or determinations on future sanctuary site designations. The impact of future potential national marine sanctuary designations will be evaluated individually on a case-by-case basis and will be subject to a Regulatory Flexibility Act review at that time. Therefore, it is not expected that the modifications of the regulations at 15 CFR 922.10 will have a significant economic impact on a substantial number of small entities.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

B. Executive Orders 12866 and 13563

This proposed rule has been determined to not be significant within the meaning of Executive Order 12866.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

Dated: June 24, 2013

Holly A. Bamford, Ph.D.

Assistant Administrator for

Ocean Services and Coastal Zone Management

Accordingly, for the reasons set forth above, NOAA proposes to amend 15 CFR part 922 as follows:

**PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Amend § 922.3 by removing the definitions of “Active Candidate” and “Site Evaluation List.”
3. Revise Subpart B to part 922 to read as follows:

## Subpart B—Sanctuary Nomination Process

### § 922.10 General.

- (a) The sanctuary nomination process is currently active.
- (b) To find out how to submit a nomination, contact ONMS by visiting [www.sanctuaries.noaa.gov](http://www.sanctuaries.noaa.gov).
- (c) The Director will evaluate all nominations according to the criteria identified in section 303(b) of the National Marine Sanctuaries Act, Sanctuary Designation Standards (16 U.S.C. 1433), and any further guidance issued by NOAA.
- (d) The Director will maintain a publically available inventory of sites that NOAA has determined to be eligible for sanctuary designation.
- (e) A determination that a site is eligible for sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

## Subpart C—Designation of National Marine Sanctuaries

### § 922.21 [Removed and Reserved]

- 4. Remove and reserve § 922.21.

### § 922.23 [Removed and Reserved]

- 5. Remove and reserve § 922.23.

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