
**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF NATIONAL MARINE SANCTUARIES**

**OVERVIEW OF
CONDUCTING CONSULTATION PURSUANT TO
SECTION 304(d) OF THE NATIONAL MARINE SANCTUARIES ACT
(16 U.S.C. 1434(d))**

SEPTEMBER 2009

The primary purpose of this document is to assist Federal agencies in complying with the consultation requirements of section 304(d) of the National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.; NMSA). This overview is for general information and educational purposes only; it is not an enforceable document or intended to establish policy and should not be cited to for 304(d) consultation compliance purposes.



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1.0 INTRODUCTION

1.1 BACKGROUND

1.1.1 *National Marine Sanctuaries Act*

The National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.; the Act or NMSA) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. The NMSA provides the National Oceanic and Atmospheric Administration's Office of National Marine Sanctuaries (ONMS) with authority to comprehensively manage uses of the National Marine Sanctuary System (System)¹ and protect its resources through regulations, permitting, enforcement, research, monitoring, education and outreach.

1.1.2 *Consultation under section 304(d)*

In 1992, Congress amended the NMSA to require interagency coordination pursuant to section 304(d).² Section 304(d) requires Federal agencies to consult with the ONMS whenever their proposed actions are *likely to destroy, cause the loss of, or injure a sanctuary resource*.³ Through the same legislation, Congress designated the Gerry E. Studds Stellwagen Bank National Marine Sanctuary (SBNMS) and required Federal agencies to consult on proposed actions that *may affect* resources of that area.⁴ Collectively, these interagency consultation requirements will be referred to as “the NMSA consultation requirements” throughout this document. The complete text of section 304(d) can be found in Appendix A.

The purpose of NMSA consultation is to protect sanctuary resources by requiring Federal agencies to consider alternatives to proposed actions that might otherwise destroy, cause the loss of, or injure these resources. The staff of the ONMS works diligently with Federal agencies to assist them in achieving full compliance with NMSA consultation. The ONMS encourages Federal agencies to work proactively with office staff to identify actions that may require NMSA consultation and to complete this consultation at the earliest practicable time. The first point of contact for questions about the NMSA consultation requirements is the appropriate sanctuary superintendent (see Appendix B for contact information).

1.1.3 *Purpose of this document*

The primary purpose of this document is to assist Federal agencies in complying with the consultation requirements of section 304(d) of the National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.; NMSA). This overview is for general information and educational purposes only; it is not an enforceable document or intended to establish policy and should not be cited to for

¹ The “System” as used in this document refers collectively to all national marine sanctuaries designated pursuant to the NMSA. The processes presented in this document do not apply to the Papahānaumokuākea (Northwestern Hawaiian Islands) Marine National Monument, which is jointly administered by NOAA, the U. S. Fish and Wildlife Service, and the State of Hawaii.

² Public Law 102-587

³ 16 U.S.C. § 1434(d)

⁴ Section 2202(e) of Public Law 102-587

304(d) consultation compliance purposes. Among other things, this overview is designed to serve as an introduction to the requirement and answer the following questions about the NMSA consultation requirements:

Question:	Refer to:	
To whom do the NMSA consultation requirements apply?	Box 1	Page 4
When do the NMSA consultation requirements apply?	§2.1	Page 4
How should the NMSA consultation process be initiated?	§3.0	Page 8
How should a Federal agency respond to ONMS recommended alternatives?	§3.4	Page 9
What if the ONMS's recommended alternatives cannot be implemented?	§3.4	Page 9
What happens if sanctuary resources are injured in the course of conducting an action?	§4.2	Page 10
How does one integrate the NMSA consultation requirement with NEPA and other Federal laws?	§5.0	Page 11
Who should one contact with questions about the NMSA consultation process?	Appendix B	Page B-1

1.2 ORGANIZATION OF THIS DOCUMENT

This document presents an overview of the sequence of steps set out in the NMSA for consultation on Federal agency actions that are likely to injure the resources of a national marine sanctuary. These steps can be divided into three general phases: pre-consultation, the NMSA consultation process, and post-consultation (see Figure 1). Specifically, section 2.0 of this document discusses the evaluation necessary to determine whether NMSA consultation is required and the steps to be taken prior to initiating consultation; section 3.0 describes the consultation process; and section 4.0 identifies the steps to be taken after completing NMSA consultation.

In addition to describing each phase of the consultation, this overview contains information about integrating the NMSA consultation requirements with other regulatory and statutory requirements, including sanctuary permits (Section 5.0).

The complete text of section 304(d) of the NMSA can be found in Appendix A, and contact information for NMSA consultations is contained in Appendix B.

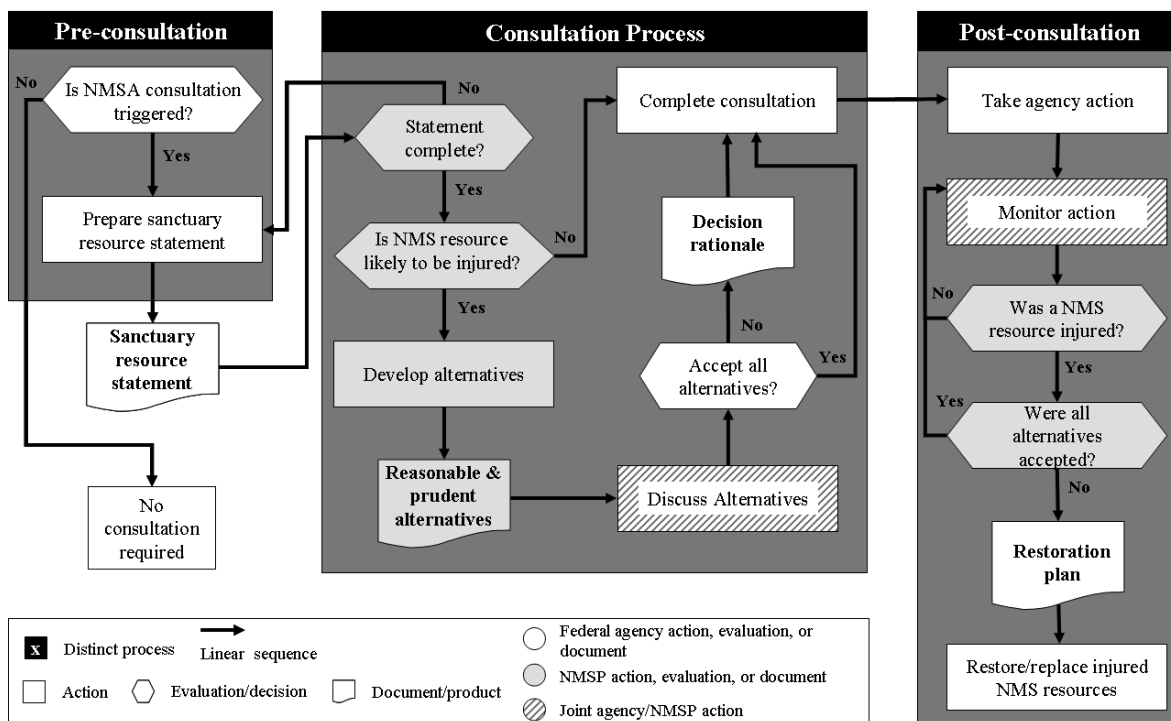


Figure 1. Overview of the NMSA Consultation Process

2.0 PRE-CONSULTATION STEPS

Before a Federal agency takes an action, there are a number of steps necessary to determine whether the NMSA consultation threshold is triggered and if consultation is required (see Figure 2).

2.1 WHEN IS NMSA CONSULTATION REQUIRED?

NMSA consultation is triggered when the effects of a proposed *Federal action* are *likely to injure a sanctuary resource*.⁵ These terms are described in more detail below. Federal action agencies are responsible for evaluating their proposed actions and for determining whether their proposed actions are likely to injure sanctuary resources.⁶ Where appropriate, however, the ONMS may independently evaluate proposed Federal actions and request that those agencies prepare a sanctuary resource statement and initiate the NMSA consultation process.

2.1.1 Federal actions subject to consultation

Federal actions subject to the consultation requirements of Section 304(d) include actions inside or outside the boundary of a national marine sanctuary, including private activities authorized by licenses, leases, or permits. The Federal action agency must review any such action to determine whether it is likely to injure sanctuary resources.

For example, a Federal agency undertaking a dredging project in a national marine sanctuary would trigger the NMSA consultation requirement if the dredging is likely to injure sanctuary resources.⁷

In addition, a Federal agency that discharges waste outside the boundary of a national marine sanctuary may trigger the consultation requirement even though the actual dumping, or outfall, does not occur within the sanctuary boundary (if such discharge is likely to enter the sanctuary and injure sanctuary resources).

As an example regarding authorization of private activities, a Federal agency proposal to issue a license to a third party to operate a liquefied natural gas terminal or deepwater port would trigger NMSA consultation if that action is likely to injure sanctuary resources.

Box 1. Who is required to consult?

The NMSA consultation requirements only apply to federal agency actions, including the issuance of licenses and permits to non-federal entities. These requirements do not apply to private citizens, corporations, state, territory, tribal, or local governments, or other entities not affiliated with the federal government.

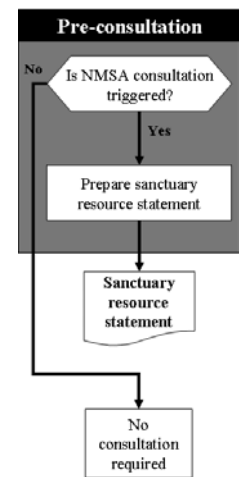


Figure 2. Pre-consultation Steps

⁵ As previously discussed, for Stellwagen Bank NMS only this threshold is “may affect” sanctuary resources (see section 2.1.3). For brevity, this distinction is assumed throughout the document when discussing the consultation threshold. In addition, this document will use the term “injure” to be inclusive of the phrase “destroy, cause the loss of, or injure” (see section 2.1.3).

⁶ The legislative history of the 1992 amendments to the NMSA makes clear that Congress intended federal action agencies to be responsible for initiating the NMSA consultation process (House Report 102-565, June 15, 1992).

⁷ Federal actions affecting sanctuaries such as these may also require a ONMS permit or other authorization if occurring within the sanctuary (see section 4.1)

2.1.2 *Sanctuary resource defined*

The NMSA defines sanctuary resources as:

“any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;”⁸

Sanctuary resources are further defined in ONMS regulations as:

“any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at [15 CFR 922.191].”⁹ For Hawaiian Islands Humpback Whale National Marine Sanctuary, sanctuary resource means “any humpback whale, or the humpback whale’s habitat within the sanctuary.”¹⁰

“Cultural resources” are defined at 15 CFR 922.3 as:

“any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.”¹¹

“Historical resource” is defined at 15 CFR 922.3 as:

“any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include “submerged cultural resources”, and also include “historical properties,” as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.”¹²

As defined by the NMSA and its implementing regulations, therefore, the term *sanctuary resource* is very broad and includes virtually every living and nonliving component of the sanctuary ecosystem, with the exception of the Thunder Bay and Hawaiian Island Humpback Whale national marine sanctuaries, which have a more limited definition of sanctuary resources as noted above.

⁸ 16 U.S.C. § 1432(8)

⁹ 15 CFR 922.3

¹⁰ 15 CFR 922.182

¹¹ 15 CFR 922.3

¹² 15 CFR 922.3

2.1.3 Determining injury

NMSA consultation is required whenever a Federal action—

1. Is likely to destroy, cause the loss of, or injure a sanctuary resource; or
2. May affect a resource of the SBNMS.

These thresholds established by Congress relate to both to the nature of the impact of proposed actions on sanctuary resources and the probability those impacts will occur.

Section 304(d) of the NMSA requires Federal agencies to consult with the ONMS when they determine a proposed action is *likely to destroy, cause the loss of, or injure a sanctuary resource*. This document uses the term “injury” to be inclusive of the phrase “destroy, cause the loss of, or injure.” The term “injure” is defined in the ONMS regulations to “change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.”¹³

Section 304(d) also uses the words “destroy or cause the loss of,” which are phrases subsumed in the regulatory definition of “injury.” “Destroy or cause the loss of” generally refers to killing living resources, or, when in reference to non-living sanctuary resources, completely removing that resource.

For SBNMS, agencies must consult with ONMS upon a determination that an agency action “may affect” SBNMS resources. This is a lower threshold; therefore, discussions with SBNMS staff will be helpful in determining whether consultation is required.

2.2 SANCTUARY RESOURCE STATEMENT

When a Federal agency determines that an agency action is likely to injure a sanctuary resource, the NMSA requires the Federal agency to provide the ONMS with a written statement (hereafter referred to as “sanctuary resource statement”) describing “the [agency] action and its potential effects on sanctuary resources”. The action agency must submit the sanctuary resource statement at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary¹⁴ agree to a different schedule.”¹⁵

The purpose of the sanctuary resource statement is to provide the ONMS with enough information to understand the nature of the proposed activity and its potential impacts on sanctuary resources. It is important to recognize that sanctuary resource statements are not necessarily separate documents prepared by the Federal agency and may consist of documents prepared in compliance with other statutes such as National Environmental Policy Act (NEPA), Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA). The agency need only ensure complete information is provided to the sanctuary superintendent and may use existing analyses, processes, or mechanisms to provide this information.

Sanctuary resource statements may include, for example:

¹³ 15 CFR 922.3

¹⁴ Delegated to the NOAA ONMS Director

¹⁵ 16 U.S.C. § 1434(d)(1)(B)

- A statement of the purpose or objectives of the action or activity;
- The location of the proposed action and any alternative locations, including any alternatives outside national marine sanctuary boundaries;
- A description of the methods and means for carrying out the activity or action and any alternative methods available;
- A description of the equipment proposed to be used and any alternative equipment;
- Documentation supporting the likelihood of the action causing injury to sanctuary resources;
- The views of recognized experts on the likely or potential effects of the action on sanctuary resources;
- The results of an on-site survey of the action area by agency personnel and/or ONMS staff;
- A review of pertinent literature and related information;
- An analysis of alternatives to the agency action that are not likely to injure sanctuary resources, including conduct of the action outside sanctuary boundaries;
- Copies of any Federal, territory, state, tribal, or local authorizations, permits, licenses, or other forms of approval (or applications for authorizations, permits or licenses if not yet granted) required for the project or a summary of such approvals that have been sought;
- Copies of pertinent reports, including, but not limited to, any environmental impact statement, environmental assessment or biological assessment prepared, and any other relevant information.

Box 2. Can an EA or EIS suffice as a sanctuary resource statement?

An appropriate environmental assessment (EA) or environmental impact statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA) can be used to satisfy the requirement for a sanctuary resource statement. Because an EA or EIS will often contain significant information not relevant for section 304(d) purposes, the agency should identify the portions of the document that pertain directly to impacts on sanctuary resources. In this way, the NEPA document can be readily analyzed and a determination of whether the information provided by the action agency is complete can be made.

3.0 THE CONSULTATION PROCESS

3.1 INITIATING THE NMSA CONSULTATION PROCESS

The NMSA consultation process begins once the Federal action agency submits the sanctuary resource statement. The steps and sequence involved when conducting the consultation is depicted in Figure 3 and further explained in Box 3.

3.2 EVALUATION OF THE SANCTUARY RESOURCE STATEMENT

3.2.1 Completeness evaluation

Upon receipt of a sanctuary resource statement from a Federal action agency, the ONMS will determine whether it contains sufficient information to evaluate the likelihood that the action will destroy, cause the loss of, or injure sanctuary resources and develop any necessary reasonable and prudent alternatives to protect sanctuary resources. The ONMS will notify the Federal action agency when it determines a sanctuary resource statement is complete or when the ONMS requires additional information. The ONMS will make every effort to complete this initial evaluation promptly and accommodate the schedules of action agencies. In some cases, additional information may be necessary to fully evaluate the action and develop ONMS recommended alternatives to protect sanctuary resources. Upon receiving the requested information, the ONMS will reevaluate the sanctuary resource statement for completeness.

The ONMS's 45-day period to recommend alternatives to the action begins when complete information has been received.

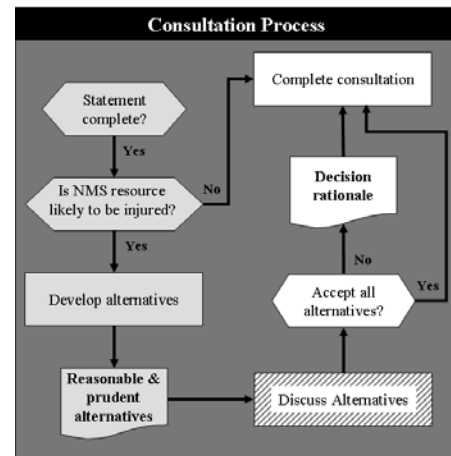


Figure 3. Consultation Process Steps

Box 3. Timing of NMSA consultation

Initiating NMSA consultation—The NMSA consultation requirements direct federal action agencies to submit a sanctuary resource statement at the “earliest practicable time” indicating the need to initiate NMSA consultation as early in the decisionmaking process as feasible.

Submitting a sanctuary resource statement—The NMSA consultation requirements direct federal action agencies to submit sanctuary resource statements a minimum of 45 days before “final approval” of the action

ONMS response—The ONMS will review a sanctuary resource statement as soon as possible upon receipt. Within 45 days of receiving complete information on the proposed action, the ONMS shall recommend alternatives to the action agency (or conclude consultation, upon a determination that the action will not destroy, cause the loss of, or injure sanctuary resources).

Alternative timeframes—These timeframes may be extended or shortened if the ONMS and action agency agree to a different schedule.

3.2.2 *Potential effects determination*

The ONMS will review complete sanctuary resource statements to assess the intensity and duration of the potential effects on sanctuary resources and the probability those potential effects will injure sanctuary resources. The ONMS may also use information obtained from other sources (e.g., published literature, independent experts, and documents or reports prepared by other Federal agencies to assist in making its determination).

If the ONMS determines sanctuary resources are not likely to be injured by the proposed Federal action, the ONMS will so notify the action agency and consultation is concluded. If the ONMS finds the agency action will be likely to injure sanctuary resources, it will, in coordination with the action agency, develop recommended alternatives to protect against injury to sanctuary resources in accordance with section 3.3 of this document. These recommended alternatives will be submitted to the action agency within 45 days of the ONMS's receipt of a complete sanctuary resource statement unless the agencies agree to a different schedule.

3.3 DEVELOPMENT OF ONMS RECOMMENDED ALTERNATIVES

Once it has completed its evaluation of the proposed Federal action, the ONMS, in coordination with the Federal action agency, will prepare recommended alternatives which may be incorporated into the proposed action or implemented in addition to the proposed action to protect sanctuary resources. Recommended reasonable and prudent alternatives in the context of section 304(d) can best be understood as those actions necessary to protect sanctuary resources. These alternatives generally focus on the location, timing, and methods of the proposed action. The ONMS may recommend, for example, the activity be conducted—

1. At an alternate location, including a location outside the sanctuary (or sanctuaries, if more than one are the subject of the consultation);
2. During a different season or that it be delayed for a specified period of time;
3. With alternative equipment or procedures; or
4. Some combination of these recommendations.

Recommended alternatives will be developed by the superintendent of the affected sanctuary (in consultation with the ONMS Director, as necessary) and then transmitted to the Federal action agency. If multiple sanctuaries are affected by a proposed action, the recommendations will be developed by the affected sanctuary superintendents and transmitted by the Regional Superintendent or the ONMS Director, as appropriate.

3.4 AGENCY RESPONSE

Promptly upon receiving the recommended alternatives from the ONMS, the action agency must consult with the ONMS to discuss the recommendations. If the action agency plans to fully implement the ONMS recommended alternatives and fully incorporate them into its proposed action, no further NMSA consultation is necessary prior to conducting the action. If the agency decides not to follow the ONMS recommended alternatives, the agency must provide a written explanation to the ONMS that describes the reason or reasons for not following the alternatives. If the agency determines that its action changes such that the nature or likelihood of injury to sanctuary resources changes, the action agency should determine whether a new consultation is required.

4.0 POST-CONSULTATION ACTIONS

After the action agency considers the ONMS's recommendations, it can then determine its course of action, approve the final action and take the necessary steps to implement it. There are a variety of steps that may occur after the action has been taken, in the post-consultation phase of the process (see Figure 4).

4.1 MONITORING THE ACTION

Once the determination has been made to move forward with a particular course of action, monitoring the activity is important to ensure recommendations agreed to by the agency are implemented and to document any injury to sanctuary resources. Specific monitoring requirements may be part of the alternatives and recommendations made to the Federal action agency during NMSA consultation. Depending on the situation, this monitoring may be conducted by the action agency, the ONMS, or both.

4.2 INJURED SANCTUARY RESOURCES

Section 304(d)(4) of the NMSA requires agencies not adopting ONMS recommendations to take certain steps if their action results in injury to sanctuary resources.

4.2.1 Immediate steps to be taken

If injury to sanctuary resources results from the conduct of the agency action, the NMSA requires the agency to promptly prevent further damage and develop and implement measures to mitigate further damage in a manner approved by the ONMS.

4.2.2 Restoration

Once the injury to sanctuary resources has been stopped, the NMSA requires Federal agencies to "restore or replace the sanctuary resource in a manner approved by the [ONMS]."¹⁶ Restoration or replacement can take many forms depending on the type of injury caused and the nature of the resource. For example, restoration for a Federal action which resulted in destruction of a seagrass bed might involve replanting and/or erection of aids to navigation to prevent further injury. In any case, the action agency should first submit a restoration plan to the ONMS for approval before committing agency resources to implementing the restoration.



Figure 4. Post-consultation Steps

¹⁶ 16 U.S.C. § 1434(d)(4)

5.0 RELATIONSHIP TO OTHER REQUIREMENTS

5.1 ONMS REGULATIONS AND PERMITS

While the NMSA consultation requirements apply only to Federal agencies, the ONMS regulations apply to individuals, private and public entities, and officers, employees, agents, departments, agencies, and instrumentalities of the Federal government, of any state, tribal or local unit of government, or of any foreign government.¹⁷ Nothing in the language of the NMSA consultation requirements supplants ONMS regulatory requirements or procedures. The NMSA consultation requirements are, therefore, statutory requirements in addition to any requirements or prohibitions found in the ONMS's implementing regulations.

Among other things, ONMS regulations define the boundaries for the sanctuaries, list activities that are prohibited within each sanctuary, and establish permitting procedures for the lawful conduct of certain of these activities. If a Federal action is prohibited by ONMS regulations, the agency or person may not conduct that activity unless a permit is granted by the ONMS. See Figure 5 for a depiction of how the two processes integrate.

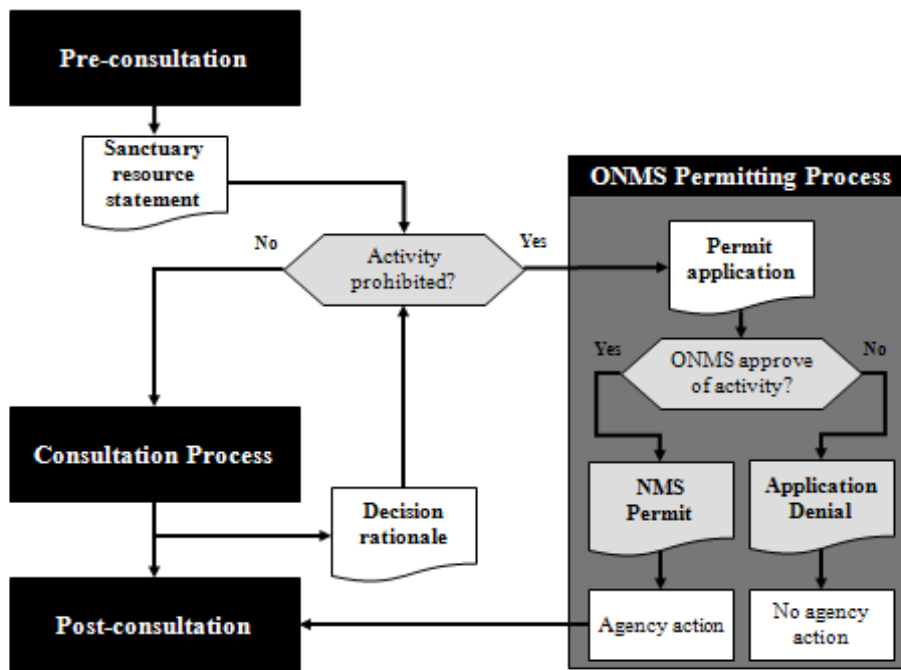


Figure 5. Integration of NMSA Consultation with ONMS Permits

Since ONMS regulations do not prohibit any and all activities that trigger the NMSA consultation requirements, it is likely that many proposed Federal actions will trigger the NMSA consultation requirements without requiring a permit. For example, vessel transits through a

¹⁷ 15 C.F.R. § 922.3

sanctuary are generally not prohibited and therefore do not require a permit. However, if a proposed Federal action in or near a sanctuary would result in an increase in vessel traffic that is likely to injure sanctuary resources, the Federal agency would be required to consult under section 304(d).

If a proposed Federal action requires both NMSA consultation and a sanctuary permit, the ONMS will conduct both processes simultaneously, to the extent practicable. For example, a dredging project conducted by a Federal agency within a national marine sanctuary may require both a sanctuary permit and trigger NMSA consultation. Because the nature of the proposed Federal agency action may change as a result of NMSA consultation and the Secretary’s recommended alternatives, it will often be necessary to complete the NMSA consultation process before ONMS action on a permit application. In some cases, the ONMS’s recommended alternatives may modify the proposed activity such that a permit is not necessary (e.g., conduct of an activity outside the System).

5.2 NATIONAL ENVIRONMENTAL POLICY ACT

The NMSA consultation and National Environmental Policy Act (NEPA) processes should run concurrently. The legislative history of the 1992 amendments to the NMSA made it clear that the burden for compliance with NEPA does not shift to the ONMS to prepare a NEPA analysis of its recommended alternatives.¹⁸ Whether an EA/EIS is required or the action is categorically excluded, the Federal action agency is responsible for complying with all NEPA requirements.

Figure 6 illustrates how the NMSA consultation requirements can be integrated with NEPA and other consultation processes described in section 5.3. To the extent practicable, the ONMS will strive to coordinate the NMSA consultation process with any other required consultations triggered by the proposed action.

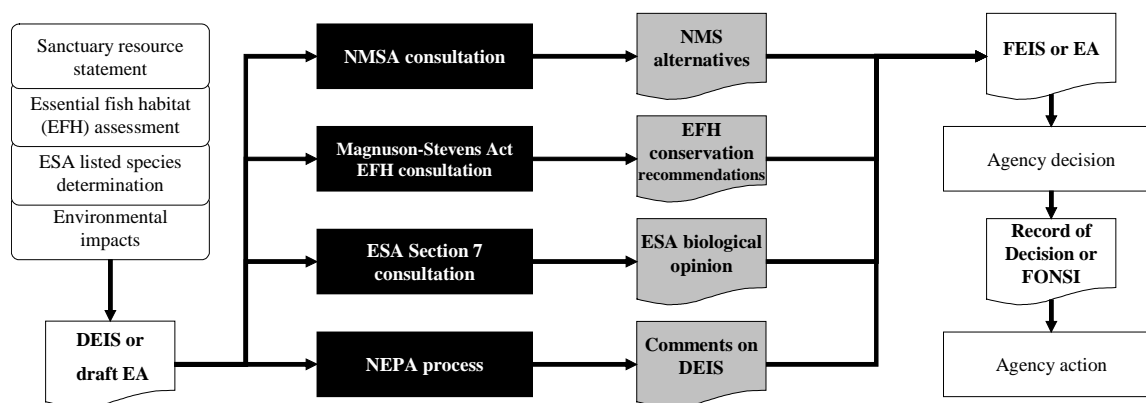


Figure 6. Integration of NMSA Consultations with NEPA

5.3 OTHER CONSULTATION REQUIREMENTS

Aside from the NMSA consultation requirements addressed in this document, section 7 of the Endangered Species Act (ESA) and section 305(b)(2) of the Magnuson-Stevens Fishery

¹⁸ House Report 102-565, June 15, 1992

Conservation and Management Act (MSA) each require Federal agencies to consult with NOAA in various circumstances. The ESA requires consultation when proposed Federal actions may affect listed species or critical habitat.¹⁹ The MSA requires consultation when proposed Federal action may adversely affect areas identified and described as essential fish habitat.²⁰ MSA consultations are conducted by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries). ESA consultations are conducted by either or both NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS) depending upon the affected species.

To the extent possible, the action agency, the ONMS, and other agencies as appropriate should work to facilitate compliance with all three statutory requirements in a coordinated and efficient manner.

¹⁹ For more information about NMSA consultations under the ESA, refer to the *Section 7 Handbook*. The document is available at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>.

²⁰ For more information about consultations under the MSA, refer to the *EFH Consultation Guidance* document available at http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/consult_index.htm.

APPENDIX A. THE NMSA CONSULTATION REQUIREMENT

Section 304(d) of the NMSA reads:

- “(d) INTERAGENCY COOPERATION.—
- “(1) REVIEW OF AGENCY ACTIONS.—
- “(A) IN GENERAL.—Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.
- “(B) AGENCY STATEMENTS REQUIRED.—Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.
- “(2) SECRETARY'S RECOMMENDED ALTERNATIVES.—If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.
- “(3) RESPONSE TO RECOMMENDATIONS.—The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.
- “(4) FAILURE TO FOLLOW ALTERNATIVE.—If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.”

Section 2202(e) of Public Law 102-587 states, as it applies to SBNMS:²¹

"CONSULTATION.—In accordance with the procedures established in 304(d) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this title, the appropriate Federal agencies shall consult with the Secretary on proposed agency actions in the vicinity of the Sanctuary that may affect sanctuary resources."

²¹ As amended by section 9(g) of Public Law 104-283

APPENDIX B. CONTACT INFORMATION

For more information about the NMSA consultation requirements and process at a specific site, please contact the superintendent of the appropriate sanctuary from the list below.

If the action affects more than one sanctuary, or for general information about consultations, contact the ONMS national permit coordinator in Silver Spring, Maryland.

Office of National Marine Sanctuaries

National Permit Coordinator
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125
Fax: 301-713-0404
nmspermits@noaa.gov

Florida Keys National Marine Sanctuary

Superintendent
33 East Quay Road
Key West, FL 33040
305-809-4700
Fax: 305-293-5011
floridakeys@noaa.gov

Channel Islands National Marine Sanctuary

Superintendent
113 Harbor Way
Santa Barbara, California 93109
805-966-7107
Fax: 805-568-1582
channelislands@noaa.gov

Flower Garden Banks National Marine Sanctuary

Superintendent
4700 Avenue U, Building 216
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Cordell Bank National Marine Sanctuary

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Gray's Reef National Marine Sanctuary

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Fagatele Bay National Marine Sanctuary

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Gulf of the Farallones National Marine Sanctuary

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**Hawai'ian Islands Humpback Whale
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Monitor National Marine Sanctuary

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**Monterey Bay National Marine
Sanctuary**

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**Olympic Coast National Marine
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**Stellwagen Bank National Marine
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**Thunder Bay National Marine Sanctuary
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