



## **Preliminary Findings Required under the National Marine Sanctuaries Act, Sec. 304(f)**

### Introduction

The National Marine Sanctuaries Act (NMSA) provides the National Oceanic and Atmospheric Administration (NOAA), acting through the Office of National Marine Sanctuaries (ONMS), with authority to identify and designate national marine sanctuaries, comprising areas of the marine and Great Lakes environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities. NOAA is proposing to designate two new sanctuaries: (1) Wisconsin – Lake Michigan National Marine Sanctuary, and (2) and Mallows Bay – Potomac River National Marine Sanctuary. The Wisconsin – Lake Michigan sanctuary would encompass 1,075 square miles of Wisconsin state waters and bottomlands. The Mallows Bay – Potomac River sanctuary would encompass 52 square miles of Maryland state waters and bottomlands. Both proposed sanctuaries would protect maritime cultural heritage resources of national significance and would have a targeted set of regulations that include a prohibition on damaging these resources.

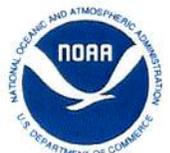
Under Sec. 304(f)(1) of the NMSA, NOAA is required to make certain findings relating to any proposal to designate a new sanctuary. Additional information on the general criteria for performing the 304(f) analysis is provided in a separate document, entitled “Program Criteria and Definitions Informing Findings under Section 304(f) of the National Marine Sanctuaries Act.”

NOAA is publishing these preliminary findings concurrently with proposed regulations for the designation of Wisconsin - Lake Michigan and Mallows Bay – Potomac River national marine sanctuaries, and the draft management plans, and draft environmental impact statements (DEISs) prepared for each sanctuary pursuant to the National Environmental Policy Act.<sup>1</sup> The DEISs evaluate a reasonable range of alternatives (including a no action alternative) and also serve as resource assessments under the NMSA, documenting present and potential uses of the areas considered in the alternatives.

NOAA preliminarily makes the following findings for the three elements required by 304(f): The two sanctuary designations currently being proposed will not have a negative impact on the National Marine Sanctuary System (System), and sufficient resources exist to effectively implement sanctuary management plans and complete site characterizations as required under the NMSA. NOAA is making one set of combined preliminary findings for both proposed sanctuaries since the publication of the draft designation documents is occurring simultaneously. In preparing these findings, NOAA considered the impacts on the System from each proposed sanctuary individually and from the combined effect of designating both at the same time.

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<sup>1</sup> In accordance with 304(f), NOAA is publishing preliminary findings at this time, and will make final findings after considering public comments on the designation proposals and after consultations with federal, state, and local agencies and tribal governments.



**Before taking a final action, NOAA will again consider the individual and cumulative impacts of the designations on the System to make final findings.**

### Background

#### *Wisconsin – Lake Michigan*

On December 2, 2014, Wisconsin Governor Scott Walker submitted the Wisconsin – Lake Michigan nomination to NOAA for consideration as a new national marine sanctuary through the Sanctuary Nomination Process (SNP).<sup>2</sup> In the nomination, the State of Wisconsin and a network of coastal communities called for increased protection of maritime cultural heritage resources within their state waters and bottomlands of Lake Michigan. The nomination included broad support from local government and non-government organizations. After NOAA reviewed the nomination, it accepted Wisconsin – Lake Michigan onto the inventory of areas NOAA may consider for sanctuary designation. NOAA initiated the sanctuary designation process for Wisconsin-Lake Michigan on October 7, 2015 with a notice of intent to consider regulations and resource protection efforts to ensure the long term protection of the nationally significant collection of historic shipwrecks and other maritime cultural heritage resources in the area.

NOAA's preferred Wisconsin-Lake Michigan boundary alternative would designate 1,075 square miles of the waters and bottomlands of Lake Michigan adjacent to Manitowoc, Sheboygan, and Ozaukee Counties. Principal cities in this area are Port Washington, Sheboygan, Manitowoc, Two Rivers, and Mequon. The proposed boundary includes 80 miles of shoreline and extends 7 to 16 miles from the shoreline. The proposed sanctuary would protect and interpret a nationally significant collection of maritime cultural heritage resources, including 37 known shipwrecks, about 80 yet to be discovered shipwrecks, and numerous other historic maritime-related features. NOAA's preferred regulatory alternative provides protection to these resources, including a provision that prohibits grappling or anchoring on shipwreck sites. The sanctuary would also enhance and facilitate broader lake conservation efforts and heritage tourism within the many Wisconsin communities that have embraced their centuries-long maritime relationship with Lake Michigan, the Great Lakes region, and the nation.

#### *Mallows Bay – Potomac River*

On September 16, 2014, Maryland Governor Martin O'Malley submitted the Mallows Bay – Potomac River nomination to NOAA for consideration as a new national marine sanctuary through the Sanctuary Nomination Process. In the nomination, the State of Maryland and a coalition of community groups called for increased protection for maritime cultural heritage resources within their state waters around Mallows Bay in the Potomac River. The nomination included broad support from local government and non-government organizations. After NOAA reviewed the nomination in accordance with the SNP, it accepted Mallows Bay – Potomac River onto the inventory of areas NOAA may consider for sanctuary designation. NOAA initiated the sanctuary designation process for Mallows Bay - Potomac River on October 7, 2015 with a notice of intent to consider regulations and resource protection efforts to ensure the long term protection of the nationally significant collection of historic shipwrecks.

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<sup>2</sup> See 79 Fed. Reg. 33851 (June 13, 2014).

NOAA's preferred alternative for Mallows Bay – Potomac River would designate 52 square miles of the tidal Potomac River and bottomlands encompassing and surrounding Maryland's Mallows Bay. The area is 40 miles south of Washington, D.C., located off the Nanjemoy Peninsula of Charles County, Maryland. This area features nationally significant maritime cultural heritage resources, and offers opportunities for conservation, education, recreation, and research. This maritime landscape is home to a diverse collection of historic shipwrecks that date back to the Civil War and potentially date to the American Revolutionary War, totaling nearly 200 known vessels including the remains of the largest "Ghost Fleet" of World War I, wooden steamships built for the U.S. Emergency Fleet. The fleet was constructed at more than 40 shipyards in 17 states as part of the massive national wartime preparation. The area's archaeological and cultural resources cover centuries of history from the earliest American Indian presence in the region about 12,000 years ago to the Revolutionary, Civil and two World Wars, as well as successive regimes of Potomac fishing industries. NOAA's preferred alternative includes regulations to provide protection to maritime cultural heritage resources through a provision that prohibits damaging those resources. The proposed designation would complement current state-led efforts to conserve and manage the nationally significant maritime cultural heritage resources, enhance public awareness and appreciation of these resources, and facilitate recreation and tourism activities in a manner that is compatible with the resource protection mandate of the NMSA.

#### *Both Sites*

Sanctuary designation for both sites would strengthen and accelerate documentation and characterization of maritime cultural heritage resources that is fundamental to resource protection and monitoring. The sanctuaries would expand education and outreach efforts directed at long term preservation of shipwrecks and other maritime cultural heritage resources. They would promote responsible use of the sanctuaries to ensure that human activities do not diminish the historical and archeological value of these sites. The sanctuaries would attract federal, university, private and non-profit resources and expertise.

#### Impact of Earlier Findings

In 2005, NOAA made general findings under Sec. 304(f) (unrelated to any specific sanctuary designation) that adding a new national marine sanctuary at that time would have a negative impact on the National Marine Sanctuary System (System). This 2005 finding was based on NOAA's FY05 budget for the Office of National Marine Sanctuaries of \$36M and the status of management plans and site characterizations for the sites in the System. At the time, additional activities were needed to effectively execute sanctuary management plans for existing sites throughout the System, and NOAA had not completed site characterizations at all sanctuaries.

Since 2005, the NOAA's program operating budget for the Office of National Marine Sanctuaries has increased by 36 percent and the program's management approach has evolved. NOAA has refocused System priorities, refined management activities at individual sites, and has worked to find efficiencies and share expertise across the System. NOAA has used management plan reviews to address the scalability of activities in the plans so that the program can make progress on sanctuary goals and objectives at a range of funding levels. The plans are developed with input from the public and advisory councils to include actions at a range of scales

- from near-term, high priority actions to long-term, more ambitious actions that help frame sanctuary management priorities over time and guide partners in how to contribute to the site's goals. For more than a decade, NOAA has shown that management plans can be effectively implemented at these scalable levels across the System. Additionally, for every sanctuary in the System, NOAA has completed a sanctuary Condition Reports. These reports document site characterization and provide an inventory of sanctuary resources.

In sum, both resource levels and System management have changed significantly since 2005, and the 304(f) findings made in 2005 no longer reflect the current state of the System.

### **Preliminary Findings for the Proposed Designations of Wisconsin – Lake Michigan and Mallow Bay – Potomac River**

#### **1. No Negative Impact on the System**

Sec. 304(f)(1)(A) requires NOAA to determine if the new sanctuaries would have a negative impact on the National Marine Sanctuary System (the System). NOAA manages the System to fulfill the purposes and policies of the NMSA to protect nationally significant natural and cultural marine resources in the Nation's marine and Great Lakes waters. As of 2016, the System consists of the 13 national marine sanctuaries.

A new national marine sanctuary has a negative impact on the System if its addition: (1) would compromise NOAA's capacity to fulfill the purposes and policies of the NMSA (Section 301(b)); or (2) would strain resources to the point NOAA could not provide support for basic management capacity at each sanctuary in the System. Basic management capacity includes sanctuary leadership (sanctuary superintendent /program coordinator(s)), a sanctuary advisory council, and basic administrative and operational support either at the site or through the regional or headquarters level.

NOAA routinely distributes resources and capacity across the System, leverages collaborations with a broad range of partners, and focuses existing program priorities in order to ensure it fulfills the purposes of the NMSA across the System. For each of the proposed designations, ONMS has enlisted staff support from the Northeast and Great Lakes Region and headquarters and other parts of NOAA to engage with state and local partners, support the public review process, and facilitate the development of the designation documents. This reallocation of capacity has not limited the ability of the program to fulfill the purposes of the NMSA or affected basic management capacity of any site in the System.

NOAA relies on the support of multiple program offices within NOAA in addition to ONMS to achieve the purposes of the NMSA. For example, NOAA's National Center for Coastal Ocean Science is assisting ONMS in conducting biogeographic and socioeconomic research in the Wisconsin – Lake Michigan area. This work supports site characterization. This alignment of intra-agency capacity has strengthened NOAA's ability to meet the NMSA policies and objectives as well as other agency mandates.

NOAA preliminarily finds that the ONMS program's annual operating budget to support basic management capacity for each sanctuary in the System would not be strained by the addition these two new sanctuaries. The management of the two proposed sanctuaries would be narrowly focused on maritime cultural heritage resources and would have a limited set of regulations and programs to protect these resources and enhance educational and recreational opportunities.

As a result, NOAA preliminarily finds that the addition of the proposed Wisconsin – Lake Michigan and Mallows Bay – Potomac River national marine sanctuaries, both individually and cumulatively, would not have a negative impact on the System.

## **2. Effective Implementation of Sanctuary Management Plans**

Sec. 304(f)(1)(B)(i) requires NOAA to determine whether sufficient resources are available in the fiscal year in which the finding is made to effectively implement sanctuary management plans for each sanctuary in the System. In making this finding, NOAA must evaluate whether current management plans are performing within the range of expected standards.

A sanctuary management plan includes a scalable set of strategies and activities to address resource protection, research, education and operations at various levels of resources and management capacity. These plans are evaluated, revised, and reprioritized approximately every five years to consider emerging issues and to allow for adaptive management of the sanctuary and alignment with program priorities. To date, all sites in the System have completed at least one management plan review, where the original management plan and regulations were evaluated and revised, as needed, to address emerging issues and to adaptively manage the site.

In FY16,<sup>3</sup> NOAA used available resources to effectively implement existing sanctuary management plans. Throughout the System, sites are implementing their management plan programs for resource protection, research, education and operations in conjunction with partners inside and outside of NOAA in a manner that meets basic schedule and performance metrics, and within the range of expected standards. Therefore, NOAA preliminarily finds sufficient resources exist to effectively implement sanctuary management plans.

## **3. Complete Site Characterization Studies and Inventories of Known Sanctuary Resources**

Sec. 304(f)(1)(B)(ii) requires NOAA to determine whether sufficient resources are available in the fiscal year in which the finding is made to complete site characterization studies and inventory known sanctuary resources for each sanctuary within the System within 10 years after the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.

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<sup>3</sup> Due to the current status of the federal government operating under a less-than-full-year continuing resolution in FY17, which at present has been essentially the same as FY16, NOAA is evaluating these findings relative to funds available in FY16. When final findings are made, NOAA will consider the ONMS's operating budget at that time.

NOAA uses Condition Reports to document site characterization and inventory known sanctuary resources. Condition Reports provide a summary of resources in each sanctuary, pressures on those resources, the current condition and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the reports include information on the status and trends of water quality, habitat, living resources and maritime archaeological resources and the human activities that affect them.

To date, NOAA has completed a Condition Report for each site in the System. Additionally, in 2013, NOAA completed the *National Marine Sanctuary System Condition Report*. This System-wide report detailed the status and trends of resource conditions and human uses evaluated across the entire System.

Accordingly, NOAA preliminarily finds all necessary site characterization and resource inventories have been completed.

  
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NOS Assistant Administrator