



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
Office of National Marine Sanctuaries  
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## **Final Findings Required under the National Marine Sanctuaries Act, Sec. 304(f) for Mallows Bay–Potomac River National Marine Sanctuary**

### 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 designating Mallows Bay–Potomac River National Marine Sanctuary that encompasses 18 square miles of Maryland state waters and submerged lands to protect maritime cultural heritage resources of national significance.

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” (hereinafter called “Program Guidance”). The Program Guidance is published on the ONMS web page at <https://sanctuaries.noaa.gov/management/designations.html>.

In January 2017 and concurrent with the publication of proposed rulemaking, draft management plan, and draft environmental impact statement, NOAA solicited public comments on the 304(f) preliminary findings for Mallows Bay–Potomac River, which was published on the ONMS web page for Mallows Bay–Potomac River at <https://sanctuaries.noaa.gov/mallows-bay/><sup>1</sup>. NOAA did not receive any comments on the preliminary 304(f) findings.

NOAA has prepared these final findings for the designation of Mallows Bay–Potomac River National Marine Sanctuary in accordance with Sec. 304(f)(1) of the NMSA. The final findings will be published concurrently with the publication of final regulations implementing the designation. The Mallows Bay–Potomac River final environmental impact statement and final management plan (FEIS/FMP) were prepared in accordance with the National Environmental Policy Act and were released on May 31, 2019.<sup>2</sup> The FEIS evaluates a reasonable range of alternatives (including a no action alternative) and serves as a resource assessment under the NMSA, documenting present and potential uses of the areas considered in the alternatives.

Based upon review of the elements in NMSA § 304(f), NOAA finds: 1) Mallows Bay–Potomac River sanctuary designation will not have a negative impact on the National Marine Sanctuary

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<sup>1</sup> The web page has since been changed to <https://sanctuaries.noaa.gov/mallows-potomac/>

<sup>2</sup> 84 FR 25257



System (System); 2) sufficient resources exist to effectively implement sanctuary management plans; and 3) all necessary site characterizations and resource inventories have been completed.

### Background

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 (SNP; 79 FR 33851). In the nomination, the State of Maryland and a coalition of community groups called for increased protection for maritime cultural heritage resources within state waters and submerged lands in and around the Mallows Bay area of the tidal Potomac River. The nomination included broad support from local government and non-government organizations. After NOAA completed its review of the nomination and, on January 12, 2015, added Mallows Bay–Potomac River onto the inventory of areas considered eligible for sanctuary designation.

On October 7, 2015, NOAA initiated the public scoping process with the publication of a Notice of Intent (NOI) in the Federal Register (80 FR 60634). The NOI informed the public of NOAA's intent to prepare a draft environmental impact statement (DEIS) evaluating alternatives related to the proposed designation of MPNMS under the NMSA. The NOI also solicited public comments on the scale and scope of the proposed sanctuary, and announced NOAA's intent to fulfill its responsibilities under the National Historic Preservation Act (NHPA).

On January 9, 2017, NOAA published a notice of proposed rulemaking in the Federal Register (82 FR 2254 ) announcing the proposed designation of approximately 52 square miles of the tidal Potomac River encompassing and surrounding Maryland's Mallows Bay. NOAA also provided public notice of the availability of the related DEIS and Draft Management Plan (82 FR 1733; 82 FR 2254). The area is located south of Washington, D.C., off the Nanjemoy Peninsula of Charles County, Maryland.

Based on public input, internal deliberations, interagency consultations, and discussions with the State of Maryland and Charles County, NOAA is issuing a final rule that seeks to designate 18 square miles of tidal Potomac River encompassing and surrounding Mallows Bay instead of the 52 square miles that were originally proposed. The boundary begins at the mean high tide level on the Maryland side, extends across the Potomac River to the Virginia-Maryland state boundary line, and follows the boundary of the Mallows Bay-Widewater Historical and Archaeological National Register District. The boundary is identified as Alternative B in the DEIS, and closely matches the boundary submitted to NOAA by the Governor of Maryland in the sanctuary nomination package. This boundary contains a concentration of 142 known historic vessels, including the remains of vessels built for the U.S. Emergency Fleet Corporation (USEFC) between 1917 and 1919 as part of the U.S. engagement in World War I, vessels related to historic ship-breaking activities, other non-USEFC vessels of historic significance, and related maritime debris fields. The area also contains important maritime heritage features dispersed throughout the landscape; including historic sites of State of Maryland recognized Indian tribes, remains of historic fisheries operations, and Revolutionary and Civil War battlescapes.

NOAA's final regulations provide protection to maritime cultural heritage resources through a provision that prohibits damaging those resources. The 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. Sanctuary designation would also strengthen and accelerate documentation and characterization of maritime cultural heritage resources that is fundamental to resource protection and monitoring. The sanctuary would expand education and outreach efforts directed at long-term preservation of shipwrecks and other maritime cultural heritage resources. The sanctuary would promote responsible use to ensure that human activities do not diminish the historical and archeological value of these sites. The sanctuary 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 proposed FY05 Presidents 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 enacted program operating budget for the Office of National Marine Sanctuaries has increased by 10 percent,<sup>3</sup> 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 sanctuary 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 Report. 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.

### **Findings for the Designation of Mallow Bay – Potomac River**

#### **1. No Negative Impact on the National Marine Sanctuary System**

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<sup>3</sup> This calculation is based on FY19 Omnibus funding levels for ONMS at \$55.5 million.

Sec. 304(f)(1)(A) requires NOAA to determine if the new sanctuary 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 2018, 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 (e.g., sanctuary superintendent, program coordinator(s), or other staff); a sanctuary advisory council; and basic administrative and operational support. Capacity for these roles may be developed 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 the designation, 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, including work that 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 finds that the ONMS annual operating budget to support basic management capacity for each sanctuary in the System would not be strained by the addition of a new sanctuary. The management of the new sanctuary is narrowly focused on maritime cultural heritage resources and has a limited set of regulations and programs to protect these resources and enhance educational and recreational opportunities.

As a result, NOAA finds that the addition of the Mallows Bay – Potomac River National Marine Sanctuary 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 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 FY19, NOAA is using 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 finds sufficient resources exist to effectively implement sanctuary management plans.


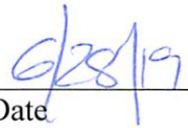
### **3. Complete Site Characterization Studies and Inventories of Known Sanctuary Resources**

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.

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 finds all necessary site characterization and resource inventories have been completed.

   
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for Ocean Services and Coastal Zone Management