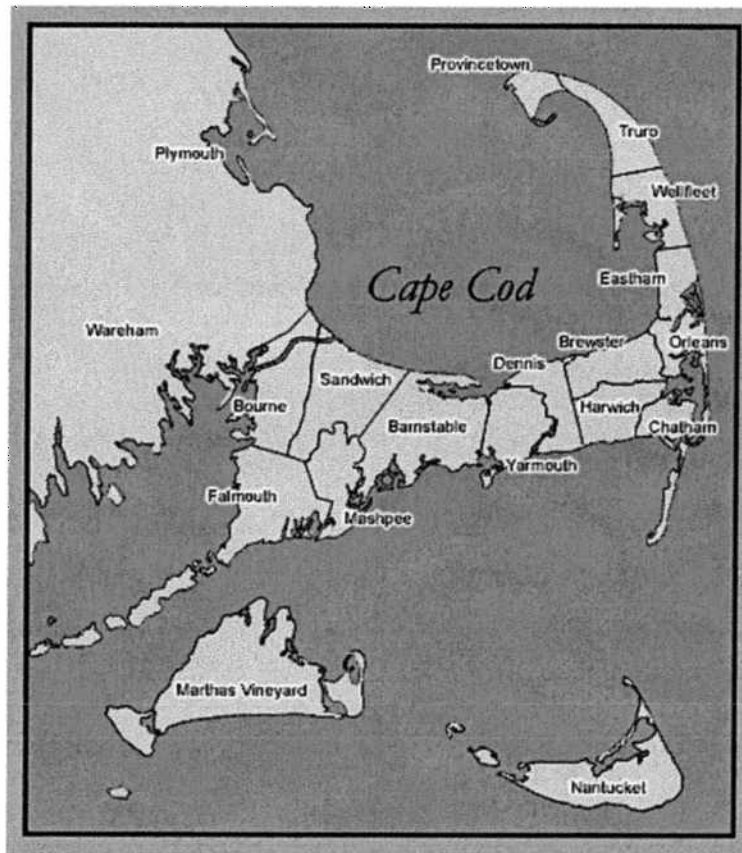


## Appendix F

---

# Congressional Research Service Report Nantucket Sound as a Proposed Marine Sanctuary Listing

---



---

May 17, 2007



**Memorandum**

May 17, 2007

**TO:** Hon. William Delahunt  
Attention: Mark Forest

**FROM:** Adam Vann  
Legislative Attorney  
American Law Division

**SUBJECT:** Proposed National Marine Sanctuary Listings

---

This memorandum is in response to your request for confirmation of the listing of Nantucket Sound in the Announcement of Proposed National Marine Sanctuary Program Site Evaluation List (SEL), as issued by the National Oceanic and Atmospheric Administration (NOAA),<sup>1</sup> as well as a characterization of the current status and meaning of the listing.

Title III of the National Marine Sanctuaries Act (NMSA)<sup>2</sup> authorizes the Secretary of Commerce (acting through NOAA) to identify, designate and manage any discrete area of the marine environment as a national marine sanctuary, and to promulgate regulations implementing the designation.<sup>3</sup> The regulations governing administration of the NMSA provide that "only sites on the SEL may be considered for subsequent review as active candidates for designation"<sup>4</sup> and that formal review of a site for designation as a National Marine Sanctuary is triggered only when a site is selected as an "active candidate."<sup>5</sup> The regulations also provide that "[p]lacement of a site on the SEL, or selection from the SEL as an active candidate for designation ... by itself does not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation."<sup>6</sup>

---

<sup>1</sup> 48 Fed. Reg. 8527 (March 1, 1983).

<sup>2</sup> 16 U.S.C. §§ 1431-1445b.

<sup>3</sup> 16 U.S.C. § 1433(a).

<sup>4</sup> 15 C.F.R. § 922.10(c).

<sup>5</sup> 15 C.F.R. § 922.21(a).

<sup>6</sup> 15 C.F.R. § 922.10(d).

On March 1, 1983, NOAA published the Announcement of Proposed National Marine Sanctuary Program Site Evaluation List.<sup>7</sup> The list of sites published in the Announcement includes Nantucket Sound, Nantucket Shoals and Oceanographer Canyon.<sup>8</sup> However, Nantucket Sound, Nantucket Shoals and Oceanographer Canyon have not been subsequently selected as active candidates for designation as National Marine Sanctuaries. Currently, the SEL is classified as “inactive,” and the NOAA regulations provide that criteria for inclusion of sites on a “revised SEL” will be issued if and when the Director of NOAA determines that the SEL should be reactivated.<sup>9</sup> Therefore, although NOAA technically still has the statutory authority to propose designation of a site from the SEL,<sup>10</sup> it appears that NOAA would not propose a new candidate for designation without first revisiting the SEL. Indeed, conversations with NOAA officials have confirmed that NOAA would revisit the SEL before selecting active candidates for designation, although those officials also confirmed that NOAA would consider “past work” such as the 1983 Announcement in compiling a revised SEL.

---

<sup>7</sup> 48 Fed. Reg. 8527 (March 1, 1983).

<sup>8</sup> *Id.* at 8528.

<sup>9</sup> 15 C.F.R. § 922.10(b).

<sup>10</sup> It should be noted that the authority of NOAA to designate Nantucket Sound or any other site on the SEL as an active candidate for designation is also restricted by a recent amendment to the NMSA, which provided that “[t]he Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary” unless certain findings are also published. 16 U.S.C. §1434(f).