

# federal register

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Part II

## Department of Commerce

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National Oceanic and Atmospheric  
Administration

15 CFR Part 922

National Marine Sanctuary Program  
Regulations; Final Rule

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 60469-7005]

## National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

**SUMMARY:** These final regulations implement the provisions of the Marine Sanctuaries Amendments of 1984, Title I of Pub. L. 98-498 (16 U.S.C. 1431 *et seq.*) (the Act or the Amendments). While the Amendments build upon the foundation established in the previous Marine Sanctuary Program regulations (48 FR 24296 (1983)), revisions are necessary to reflect procedural and some policy changes of the Amendments.

**DATE:** These regulations are effective November 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 at 202/673-5122.

## SUPPLEMENTARY INFORMATION:

## I. Authority

This notice of final rulemaking is issued under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.*

## II. General Background

On October 19, 1984, President Reagan approved Pub. L. No. 98-498; Title I of Pub. L. No. 98-498, referred to as the Marine Sanctuaries Amendments of 1984 (the Act or the Amendments), authorizes appropriations through FY 1988 for, and makes revisions to, Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.* The National Marine Sanctuary Program is administered by the Marine and Estuarine Management Division, National Oceanic and Atmospheric Administration, Department of Commerce. The Amendments set out the purposes and policies of the National Marine Sanctuary Program, establish specific criteria and procedures for designating and implementing National Marine Sanctuaries, and provide for greater participation by the Congress, the Regional Fishery Management Councils (established by the Magnuson

Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*), and other affected agencies or persons. The designation standards set forth in the Amendments basically track the site identification and selection standards and active candidate criteria used to identify potential National Marine Sanctuaries, and evaluate sites for designation.

On June 12, 1986, NOAA published proposed regulations for continued implementation of the National Marine Sanctuary Program, pursuant to the Act (51 FR 21369). Written comments on the proposed regulations were accepted until August 11, 1986. These comments have been considered in preparing these final regulations.

The final regulations set forth the Program's mission and goals, amend procedures for revising the Site Evaluation List (SEL), set forth site identification and selection criteria for including areas of the marine environment possessing historical resources of special national significance on the SEL, revise the sanctuary designation standards and process, and initiate a consultation process with Congress and Regional Fishery Management Councils (when regulations on fisheries activities are affected) prior to commencing the environmental review process required pursuant to the National Environmental Policy Act. These regulations supersede the previous regulations for the program (48 FR 24296 (1983)).

## III. Refinements to the Regulations for the National Marine Sanctuary Program

The proposed regulations solicited comments on procedural and policy revisions required to implement the Amendments. These modifications and how they are reflected in the final regulations are discussed below.

## A. Findings, Purpose, and Policies

The Amendments add findings which recognize that certain areas of the marine environment possess "conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance" (Section 301(a)). This differs from the original Act, which provided, in section 302(a), that National Marine Sanctuaries should be designated only for their "conservation, recreational, ecological, or esthetic values" (Section 302, Pub. L. No. 92-532, codified at 16 U.S.C. 1432(a) (1983)). To reflect the addition of historical qualities, NOAA's working list of potential sites is being amended (See IV.A. of the Preamble and Subpart B of the regulations). Consistent with the Amendments purpose and policies, the

National Marine Sanctuary Program provides for comprehensive management and conservation, including the support and coordination of scientific research involving the resources of marine sanctuaries, stresses efforts to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and encourages public and private uses of such resources consistent with the Program's primary objective to protect them (Section 301(b) (2)-(5)). These policies are reflected in the Program's mission and goals set forth at § 922.1.

## B. Designation Standards

The Secretary of Commerce may designate a discrete area of the "marine environment" as a National Marine Sanctuary, if he finds that:

- (a) the area is of special national significance due to its resource or human-use values;
- (b) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive management of the area, including resource protection, scientific research and public education;
- (c) Designation of the area as a National Marine Sanctuary will facilitate the objectives in subparagraph (b); and
- (d) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(Section 303(a)).

These findings are reflected at § 922.33(a) of the final regulations.

## C. Consultation

In making the above findings, the Secretary must consult with the House Committee on Merchant Marine and Fisheries; the Senate Committee on Commerce, Science, and Transportation; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including the coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by a proposed designation; and other interested persons. The consultation process for a potential designation is set forth in the final regulations at § 922.31.

Further, the Secretary of Commerce prepares, as part of an environmental impact statement, a resource assessment report regarding the commercial and recreational uses in the area proposed for designation. The Secretary must consult with the Secretary of the Interior with respect to any uses in the area subject to the primary jurisdiction of the Department of the Interior (See section 303(b) (2) and (3)). The requirement for preparation of the resource assessment report is set forth in the final regulations at § 922.31(h).

#### D. Fishery Regulations

Where fishery regulations are necessary, the Secretary shall provide the appropriate regional Fishery Management Council the opportunity to recommend to the Secretary draft sanctuary fishery regulations. This requirement is set forth in the final regulations at § 922.31(f).

#### E. Designation

A proposed designation of a National Marine Sanctuary becomes effective after the close of a review period of forty-five (45) days of continuous session of Congress, commencing with the publication of a notice of the designation and final implementing regulations in the Federal Register, unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval by Congress; or

(2) In the case of a proposed sanctuary located partially or entirely within state boundaries, the Governor of the affected state objects to the designation or any of its terms. If the Secretary determines that disapproval or objection to a proposed designation will affect the designation in a manner such that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the designation. Section 922.34 governs designation.

#### F. Access and Valid Rights

Section 304(c) of the Act provides that the Secretary may not terminate leases, permits, and rights of subsistence use or access either in existence on October 19, 1934 (the date of enactment of Pub. L. No. 93-493) for then existing National Marine Sanctuaries, or in existence on the date new national marine sanctuaries are designated pursuant to the Amendments. However, section 304(c) also provides that the exercise of such leases, permits or rights is "subject to regulation by the Secretary consistent with the purposes for which the

sanctuary is designated." The provisions of section 304(c) are set forth at § 922.11 of the final regulations.

#### G. Research and Education

The Amendments, at section 306, specify that the Secretary may conduct research and education programs to carry out the purposes of the Act. Research and education are specifically discussed at § 922.40(a) of the final regulations.

#### IV. Sanctuary Designation Process

The revisions contained in the Amendments, discussed above, make several modifications to the sanctuary designation process. This section describes the revised designation process, which is depicted in summary form in Figure 1.

##### A. Site Evaluation List

To identify sites for future consideration as national marine sanctuaries, NOAA instituted a site evaluation process in 1982; this process culminated in a list of sites, the SEL, which was published in 1983 (48 FR 35568). As initially established, the SEL consisted of twenty-nine (29) natural resource sites. The SEL serves as NOAA's working list for possible national marine sanctuary designation and is discussed in subpart B of the regulations. The qualities expressed in the original Act were used in establishing the SEL; thus, the SEL was focused on sites with conservation, recreational, ecological, or esthetic qualities.

While the Amendments add historical, research, and educational qualities, sites possessing research and educational qualities were solicited and considered in the original SEL process. Research and educational qualities are inherent in sites possessing significant conservation, recreational, ecological, and esthetic values; consequently, sites possessing research and educational qualities of special national significance are included on the current SEL. Sites of nationally significant historical quality were not, however, considered in the SEL process; the evaluation teams did not include maritime archeologists or historians or any person schooled in submerged cultural resources. There are no historical sites on the SEL. Thus, the SEL list now requires revision to include discrete marine areas possessing nationally significant historical qualities for possible conservation and management as provided by the Act. Provisions for the revision of the SEL are set forth at § 922.22. In these regulations, NOAA's use of the term "historical" comports with the Act in

encompassing cultural, archeological, and paleontological elements.

#### B. Designation of National Marine Sanctuaries

Selection of a site from the SEL as an active candidate represents the second phase in evaluating a site for potential designation; it begins the environmental impact statement process. Notice of selection as an active candidate and intent to prepare a draft environmental impact statement (DEIS) is placed in the Federal Register. At any time a site can be dropped from consideration if it is determined that a site does not meet the standard and criteria set forth in the Act.

After selection as an active candidate, a draft management plan (including necessary regulations) is prepared along with a draft environmental impact statement (DEIS). The DEIS evaluates the impacts of sanctuary designation and management plan implementation. During the preparation of the DEIS, a resource assessment report is prepared documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, a resource assessment section is prepared regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior (Section 303(b)(3)). After the DEIS and draft plan are prepared, a notice of proposed designation is published in the Federal Register and media serving communities which may be affected by the designation. On the same day that the Federal Register notice is issued, a detailed prospectus on the designation proposal (which includes the DEIS and draft plan), as discussed in § 922.32(a), is sent to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee for review for a forty-five (45) day period of continuous session.

After preparation of a final EIS and final management plan, including proposed final regulations, the Secretary of Commerce must determine whether to designate the area as a National Marine Sanctuary. Section 922.33(a) of the regulations sets forth the factors considered by the Secretary in making this determination. Designated sanctuaries should be illustrative of the nation's marine areas and allow for coordinated and comprehensive management. Generally, decisions to

designate areas as National Marine Sanctuaries are based on an evaluation of the area's natural and historical resource and human-use values; the effects of present and future uses on these values and the effects of designation on those uses; the adequacy of existing state and Federal management of the area; whether designation will ensure comprehensive management; the area's size and manageability, (e.g., it is anticipated that the maximum size will not exceed that

of the largest existing national marine sanctuary, the Channel Islands National Marine Sanctuary (1252 square nautical miles)); the fiscal capability to designate and operate any given area; and the public benefits to be derived from designation.

Notice of designation is published in the Federal Register. The designation becomes effective after the close of a second Congressional review period (and Governor's review for sites including state waters) of forty-five (45)

days of continuous session of Congress, dating from the Federal Register notice of designation (See § 922.34).

If the terms of the designation are found acceptable by Congress, and the Governor(s), for sites including any state waters, the Secretary will implement the management plan, including surveillance and enforcement activities, and such research and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

FIGURE 1.—SANCTUARY DESIGNATION PROCESS (SUMMARY)

Process stage	Action	Notice
Site Evaluation List (SEL) Established.	Final SEL.....	FR Notice.
Selection as Active Candidate.	Site selected from SEL as "Active Candidate".....	FR Notice; Public Notice of Selection.
Proposed Designation (STARTS NEPA PROCESS).	Development of Designation Materials.....	Notice of Intent to Prepare DEIS.
	Regional Scoping Meeting.....	FR Notice; Public Notice.
	Consultations with Congress, affected Regional Fishery Management Councils, states, Federal agencies, and other interested persons; preparation of DEIS, Draft Management Plan, Proposed Regulations, and Resource Assessment Report.	
	Prospectus to Congress (including Draft EIS and Draft Management Plan, proposed regulations for review under Section 304 of the Act).	FR Notice (including proposed regulations and summary of Draft Management Plan published concurrently with Draft EIS availability of Prospectus to Congress); Public Notice.
	Public Hearing.....	FR Notice; Public Notice.
	Prepare Final EIS/Management Plan and Designation Determination and Findings.	Occurs within three years of selection as Active Candidate.
Designation.....	If site meets criteria, Secretary then designates the national marine sanctuary.	FR Notice (Designation, final regulations; availability of Final EIS/Final Management Plan Notice to Congress (304(b)).
	Designation effective after 45-day period for Congressional and gubernatorial Review under Section 304(b) of the Act.	

#### V. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from five sources. Commenters included Federal and state agencies and representatives of the oil and gas industry. All comments received are on file at the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management and are available at that office for review upon request. Each of the major issues raised by commenters has been summarized and NOAA's responses are provided under the relevant subheading in this section.

#### Section-by-Section Analysis

##### Subpart B—Site Evaluation List

Proposed § 922.20(c)—One reviewer suggested that the additional criteria—historical, research, and education—to be considered when selecting sites did not sufficiently address the unique attributes of urban estuarine areas. The reviewer also noted that the research

and educational values of urban estuarine systems may not necessarily be recognized within the context of conservation, recreational, ecological or esthetic values.

*Response:* NOAA recognizes the importance of urban estuarine areas and their research and educational values and believes that these values are sufficiently represented by the designation standards set out in section 303(a) of the Act. However, as stated in § 922.1(c)(i), priority consideration will be given to offshore areas where there are no other existing special area protection mechanisms. The commenter should also consider State, local and city governments as well as the National Coastal Zone Management Program for protection of urban estuarine areas.

Proposed § 922.21(a)—One reviewer suggested that the proposed regulations were not consistent with established cultural resource procedures in that sites do not attain national significance until they have been designated National Historic Landmarks (NHL) and that under the proposed rules a site could be

designated as a national marine sanctuary without being nationally significant, i.e., designated as an NHL.

*Response:* In accordance with the Act, a site does not have to be designated an NHL or listed on the National Register to be considered nationally significant. In a cultural resource management context, SEL selection based on the criteria used for evaluating NHL eligibility conforms with existing cultural resource procedures in that established uniform standards are used to identify important historical properties worthy of protection, preservation, research and interpretation. Designation as an NHL is not a prerequisite to SEL selection, nor does SEL selection necessarily imply nomination as an NHL. The SEL serves as the preliminary process for the identification and evaluation of sites having special national significance for possible designation as National Marine Sanctuaries. After placement on the SEL, sites are further evaluated when selected as Active Candidates for sanctuary designation. Nomination as

an NHL may result from the documentation compiled during the SEL process and Active Candidate evaluation; however, such designation is distinct from the purposes of designation as a National Marine Sanctuary under the Act.

Another reviewer suggested that if all sites on the SEL are nationally significant, that they would also be NHLs and, therefore, subject to the provisions of the regulations published by the Advisory Council on Historic Preservation for protecting cultural resources (36 CFR Part 300).

*Response:* Sites selected for placement on the SEL do not have to be NHLs and, therefore, do not necessarily fall under the Advisory Council's regulations. If, however, any site selected for placement on the SEL is already an NHL, it remains subject to those regulations.

Proposed § 922.21(b)—One reviewer suggested that the public comment period be lengthened to 90 days for review of proposed historical sites prior to their being added to the SEL.

*Response:* NOAA agrees with this comment and the regulations have been modified accordingly.

Proposed § 922.22—One reviewer suggested that the phrase "or state" be added after "Federal" in the first sentence since the statement does not preclude states from restricting activities on areas prior to formal site designation.

*Response:* The listing of a site on the SEL does not subject the site to Federal regulation under the Act. The status quo for the site is, therefore, unchanged. Accordingly, an area listed on the SEL is still subject to both Federal and state regulation under other authorities. The effect of inclusion of a site on the SEL is set forth at § 922.20(c).

#### *Subpart C—Designation of National Marine Sanctuaries*

Proposed § 922.33(a)(2)(B)—One reviewer suggested that management plans for sanctuaries designated at historically significant sites do not need additional measures to protect the site from disturbances related to outer continental shelf (OCS) mineral development activities because adequate protections are already in place.

*Response:* We acknowledge that the Department of the Interior (DOI) has responsibility for mitigating any adverse impact on historically significant sites from disturbances related to OCS mineral development activities. However, mitigation of adverse impact from OCS mineral development activities does not provide for

coordinated and comprehensive management including scientific research, public education, and interpretation. A major goal of the National Marine Sanctuary Program is to enhance resource protection through comprehensive and coordinated conservation and management that complements existing regulatory authorities. The provisions of the Act enhance and complement the existing DOI historical resource protection program. The National Marine Sanctuary Program is the only mechanism to date for the protection, conservation, research, and interpretation of nationally significant historical resources beyond the territorial sea (see § 922.2(d) for the definition of marine environment). To ensure that all existing authorities are properly coordinated, it is essential that the management plan for any sanctuary designated at any nationally significant historical site address comprehensive protection, including, but not limited to, potential threats from CCS mineral development activities.

Proposed Appendix I—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites With Historical Qualities of Special National Significance

One reviewer suggested that the word "special" be deleted from the "special national significance" criterion for identification and selection because a site on the NHL may not meet the criteria for placement on the SEL.

*Response:* By specifying that only areas of "special" national significance may be designated a National Marine Sanctuary under the Act, some NHL sites may not qualify for consideration as a National Marine Sanctuary. The cultural resource component of the National Marine Sanctuary Program is intended to be very selective, illustrative of the Nation's maritime heritage and representative of the Nation's most significant historical marine resources. Thus, it is possible that some NHLs will not be considered for sanctuary designation. All historical National Marine Sanctuaries designated in the future will be eligible to be designated as NHLs, but all marine-situated NHLs may not necessarily be considered for designation as National Marine Sanctuaries.

A reviewer commented that references to the World Heritage List (WHL) are not relevant in making SEL decisions. *Response:* Since all future historical National Marine Sanctuaries will be eligible to be nominated as NHLs and because many of these National Marine Sanctuaries may also be

internationally significant, it is appropriate to specify that some may be listed on the WHL. The use of the evaluation criteria for the WHL as the established uniform standard to evaluate international significance is consistent with cultural resources procedures and policies. Additionally, it recognizes the international nature of maritime cultural resources and emphasizes that consistent with the overall mission, the National Marine Sanctuary Program will coordinate its efforts to manage marine areas of special national significance with other countries managing marine protected areas.

#### **VI. Other Actions Associated with the Notice of Final Rulemaking**

##### *(A) Classification Under Executive Order 12291*

NOAA has concluded that these regulations are not major "rules" within section 1(b) of Executive Order 12291 because they will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These final rules amend existing procedures by providing greater selectivity and specificity in initially identifying and designating potential National Marine Sanctuaries in accordance with the Marine Sanctuaries Amendments of 1984, Pub. L. 98-498. These rules establish a revised process for identifying, designating and managing National Marine Sanctuaries. They will not result in any direct economic or environmental effects, nor will they lead to any major indirect economic or environment impacts. They are intended to reduce delay and uncertainty in the site selection and approval process. All subsequent marine sanctuary designations and implementing regulations including any regulations recommended by the Fishery Management Councils will be reviewed for compliance with Executive Order 12291.

##### *(B) Regulatory Flexibility Act Analysis*

A Regulatory Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated,

managing National Marine Sanctuaries. Because the notice and comment requirements of section 553 of Title 5 of the U.S. Code are not applicable to this proposed procedural rule (5 U.S.C. 553(b)(3)(A)), the Regulatory Flexibility Act also does not apply (5 U.S.C. 603(a)). All subsequent marine sanctuary designations and implementing regulations will be reviewed for compliance with the Regulatory Flexibility Act.

*(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)*

These regulations do not contain a collection of information for purposes of the Paperwork Reduction Act.

*(D) National Environmental Policy Act*

NOAA has concluded that publication of these final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

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

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

Date: October 21, 1988.

Thomas J. Maginnis,  
Assistant Administrator for Ocean Services  
and Coastal Zone Management.  
(Federal Domestic Assistance Catalog  
Number 11.429 Marine Sanctuary Program)

Accordingly, 15 CFR Part 922 is revised as follows:

**PART 922—NATIONAL MARINE SANCTUARY PROGRAM**

**Subpart A—General**

- Sec.  
922.1 Mission, goals, and special policies.  
922.2 Definitions.  
922.10 Effect of national marine sanctuary designation.  
922.11 Access and valid rights.

**Subpart B—Site Evaluation List (SEL)**

- 922.20 General.  
922.21 Periodic reevaluation, delegations, and additions.  
922.22 Addition of sites with historical qualities of special national significance.

**Subpart C—Designation of National Marine Sanctuaries**

- 922.30 Selection of active candidates.  
922.31 Development of designation materials.  
922.32 Congressional prospectus.  
922.33 Designation determination and findings.  
922.34 Designation.  
922.35 Coordination with states.

**Subpart D—Implementation After Designation**  
Sec.

- 922.40 General.  
922.41 Enforcement procedures.  
Appendix 1 to Part 922—National Marine Sanctuary Program Site Identification and Selection Criteria for Marine Areas with Qualities of Special National Significance.

Authority: Pub. L. 93-498 (16 U.S.C. 1431-1439)

**Subpart A—General**

**§ 922.1 Mission, goals, and special policies.**

(a) In accordance with the standards set forth in Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (Act), the mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or esthetic qualities.

(b) The goals of the Program are to carry out the mission to:

- (1) Provide enhanced resource protection through comprehensive and coordinated conservation and management of National Marine Sanctuaries that complements existing regulatory authorities;
  - (2) Support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources of the National Marine Sanctuaries;
  - (3) Enhance public awareness, understanding, appreciation and wise use of the marine environment; and
  - (4) Facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the National Marine Sanctuaries;
- (c) To the extent consistent with the policies set forth in Title III of the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of National Marine Sanctuaries, while highly dependent on the nature of the sites' resources, will be no longer than necessary to ensure effective management;

(3) Management efforts will be coordinated to the extent practicable

with other countries managing protected marine areas;

(4) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR Part 7), the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, Sept. 29, 1983) and other relevant Federal regulations.

**§ 922.2 Definitions.**

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Active Candidate" means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

(c) "Historical" means possessing historical, cultural, archeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(d) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law.

(e) "National historic landmark" means a district, site, building, structure or object designated by the Secretary of the Interior under the National Historic Landmarks (NHL) Program (36 CFR Part 65).

(f) "National Marine Sanctuary" means an area of the marine environment, as defined above in subsection (d), of special national significance due to its resource or human-use values, which is designated to ensure its conservation and management.

(g) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department, or instrumentality of the Federal government, of any state or local unit of government, or of any foreign government.

(h) "Regional Fishery Management Council" means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(i) "Secretary" means the Secretary of the United States Department of Commerce or his or her designee.

(j) "Site Evaluation List" (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

(k) "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

(l) "Subsistence use" means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonedible items other than money, if the exchange is of a limited and noncommercial nature.

#### § 922.10 Effect of national marine sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien

of the United States, unless in accordance with—

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crewmember of the vessel.

#### § 922.11 Access and valid rights.

Leases, permits, licenses, or rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of the Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498)), with respect to any National Marine Sanctuary designated before that date, or in existence on the date of designation of any National Marine Sanctuary designated after October 19, 1984, shall not be terminated by the Secretary. The Secretary, may, however, regulate such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

#### Subpart B—Site Evaluation List

##### § 922.20 General.

(a) The Site Evaluation List (SEL) was established in 1983 as a comprehensive list of marine sites with high natural resource values that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries. Appendix 1 describes that list, how it was established and its purposes. In addition, Subpart F of Appendix 1 has been revised to establish identification and selection criteria for revising the list to include marine sites with historical qualities of special national significance.

(b) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(c) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.30, shall not subject the site to any regulatory control under the Marine Protection, Research and Sanctuaries Act. Such controls may only be imposed after designation, as provided for in § 922.34.

##### § 922.21 Periodic reevaluation, deletions, and additions.

(a) The Secretary shall reevaluate any site remaining on the SEL for five years (December 31, 1988, for the original sites on the SEL and a separate five-year review period, beginning with the date of their addition, for any sites added to the SEL).

(b) If, after a five-year reevaluation, the Secretary determines that a marine site on the SEL is no longer highly qualified in accordance with the Program's mission and goals and the site identification and selection criteria, the Secretary shall publish a notice in the Federal Register of an intent to delete the site from the SEL and provide a 45-day period for public comment.

(c) As sites are designated as National Marine Sanctuaries, or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL.

(d) If, after a five-year reevaluation, the Secretary determines that the new sites should be considered for addition to the SEL, the Secretary shall publish a notice in the Federal Register at least 12 months prior to initiating a new site identification process. After a 90-day period is provided for public comment on the Secretary's determination, the Secretary shall reevaluate the prior SEL development process and publish a notice in the Federal Register requesting public comment on that process and any proposed modifications, if necessary.

(e) Except as provided in § 922.21(d) and § 922.22, the Secretary will consider recommendations of potential additional sites to the SEL only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. The Secretary may determine, after an opportunity for public review and comment, whether such sites meet the selection criteria and are highly qualified in accordance with the Program's mission and goals. Qualified sites will be added to the SEL for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations.

##### § 922.22 Addition of sites with historical qualities of special national significance.

(a) The identification and selection criteria set forth in Appendix 1 shall be used to identify areas of the marine environment possessing historical qualities of special national significance. The Secretary shall establish a group of experts to be called the Marine Historical Resource Evaluation Team to recommend a list of marine sites with historical values of special national significance for inclusion in the SEL. The Marine and Estuarine Management Division of the National Oceanic and Atmospheric Administration shall direct and coordinate the activities of the Team.

(b) After analysis of the historical sites recommended by the Marine

historical Resource Evaluation Team. The Secretary shall publish a notice in the Federal Register of the historical sites proposed for placement on the SEL and shall afford the public at least 90 days in which to comment. On the basis of the identification and selection criteria in Appendix 1, and after full consideration of public comment, the Secretary shall select those sites which are qualified for placement on the SEL because of their historical qualities of special national significance, and shall publish a notice in the Federal Register of the selected sites. Written documentation shall be prepared describing the values qualifying each site for placement on the SEL.

### Subpart C—Designation of National Marine Sanctuaries

#### § 922.30 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in § 922.33.

(b) Selection of a site as an Active Candidate shall begin the formal sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designated standards and criteria set forth in the Act.

#### § 922.31 Development of designation materials.

(a) After selecting a site as an Active Candidate, the Secretary shall prepare a draft designation document, including terms of the proposed designation, a draft management plan to implement the proposed designation and any proposed regulations needed to implement the terms of the proposed designation. The draft designation document shall be prepared in consultation with the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including coastal zone management agencies, that will or are likely to be affected by the

establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act which may be affected by the proposed designation; and other interested persons.

(b) The terms of the proposed designation shall include the geographic area to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic values; and the types of activities that would be subject to regulation in order to protect those characteristics. Following designation, the terms of designation may be modified only by the same procedures through which the original designation was made. If proposed regulations are needed to implement the terms of the proposed designation, they shall be consistent with the terms of designation. Following designation, all amendments to these regulations shall be consistent with the terms of designation.

(c) The draft management plan generally shall include sections on: goals and objectives; management responsibilities; resource studies and research; enforcement, including surveillance activities; interpretive and educational programs; and proposed regulations (where applicable). Proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies shall be developed in consultation with those agencies.

(d) A draft environmental impact statement (DEIS) shall be prepared on the designation document/management plan, including any proposed regulations. The DEIS shall also include the resource assessment report, discussed in paragraph (h) of this section; maps depicting the boundaries of the proposed area, and the existing and potential uses and resources of the area.

(e) The draft management plan and the DEIS shall be prepared as quickly as possible to allow for maximum public input. The time period between Active Candidate selection and proposing to designate the area as a National Marine Sanctuary normally will not exceed three (3) years unless the Secretary determines that additional time is needed for public input.

(f) The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare and recommend for consideration by the Secretary draft regulations for fishing within the

proposed sanctuary if the proposed sanctuary includes waters within the U.S. Exclusive Economic Zone.

(1) The Council shall have one hundred and twenty (120) days from the date of the Secretary's request to prepare draft fishery regulations and submit them to the Secretary. In preparing these recommendations, the Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed sanctuary designation.

(2) Draft regulations recommended by the Council, or its determination that regulations are not necessary, may be accepted by the Secretary. When making a determination whether to accept the Council's recommendation, the Secretary shall consider whether the Council's action fulfills the purposes and policies of the Marine Protection, Research, and Sanctuaries Act and the goals and objectives of the proposed designation;

(3) The Secretary shall prepare proposed fishery regulations necessary to implement the proposed sanctuary designation if the Council:

- (i) Declines to make a determination with respect to the need for regulations,
- (ii) Makes a determination which is rejected by the Secretary, or
- (iii) Fails to recommend draft proposed regulations within the period specified in paragraph (f)(1) of the section.

(4) All amendments to fishery regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(g) Fishery activities not proposed for regulation under paragraph (f) of this section may be listed in the draft sanctuary designation document as potentially subject to regulation, without following the procedures specified in paragraph (f) of this section. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in paragraph (f) shall be followed.

(h) As part of the DEIS, the Secretary shall develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial or recreational resource uses in the area



that are subject to the primary jurisdiction of the Department of the Interior.

(i) After the DEIS is prepared, the Secretary shall publish a notice of proposed designation in the Federal Register. That notice shall include the text of the draft designation document, any proposed regulations determined necessary to implement the proposed designation, and a summary of the management plan. The Federal Register notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS.

(1) Notice of the proposed designation shall be published in newspapers of general circulation or communicated to electronic media in the communities that may be affected by the proposal.

(2) No sooner than thirty (30) days after publication of the notice of proposed designation in the Federal Register, the Secretary shall hold at least one public hearing in the coastal area or areas most affected by the proposed designation for the purpose of receiving the views of any interested parties.

#### § 922.32 Congressional prospectus.

(a) As required by section 304(a)(1)(C) of the Act, on the same day that the Federal Register notice in § 922.31(i) is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee a prospectus containing:

- (1) The terms of the proposed designation;
- (2) The basis of the designation findings made under section 303(a) of the Act with respect to the area;
- (3) An assessment of the factors required to be considered by section 303(b)(1) of the Act;
- (4) Proposed mechanisms to coordinate existing regulatory and management authorities within the area;
- (5) The DEIS and the draft management plan, including the proposed regulations, detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;
- (6) An estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;
- (7) An evaluation of the advantages of cooperative state and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any state or is superjacent to

the subsoil and seabed within the seaward boundary of a state, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*); and

(8) Any proposed regulations that may be necessary and reasonable to implement the proposed designation.

(b) In accordance with the provisions of section 304 of the Act, the Secretary shall not publish a notice to designate an area proposed as a National Marine Sanctuary until after forty-five (45) days of a continuous session of Congress starting with the day the prospectus required by paragraph (a) of this section is submitted to Congress. If either the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science and Transportation of the Senate, within the forty-five day period, issue a report concerning the prospectus, this report shall be considered by the Secretary before publishing a notice to designate a national marine sanctuary.

#### § 922.33 Designation determination and findings.

(a) In addition to preparation of the final environmental impact statement (FEIS), final regulations, and final management plan, the Secretary shall prepare a written Designation Determination and Findings to include:

- (1) A determination that the designation will fulfill the purposes and policies of the Act; and
- (2) Finding that:
  - (i) The area is of special national significance due to its resource or human-use values;
  - (ii) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
  - (iii) Designation of the area as a national marine sanctuary will ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and
  - (iv) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) In preparing the Designation Determination and Findings the Secretary must consider:

- (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, and the biogeographic representation of the site;

(2) The area's historical, cultural, archeological, 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 factors identified in paragraph (b) considerations (1), (2) and (3) of this section;

(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 Act;

(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; and

(10) The fiscal capability to manage the area as a National Marine Sanctuary.

(c) In preparing the Designation Determination and Findings, the Secretary shall consider the views of interested persons, heads of interested Federal agencies, responsible officials of appropriate state and local government entities, and appropriate officials of any Regional Fishery Management Council(s) that may be affected by the designation submitted in response to the notice proposing the designation or submitted as part of a public hearing on the proposal; and any reports submitted by the House Committee on Merchant Marine and Fisheries or the Senate Committee on Commerce, Science, and Transportation in response to the sanctuary proposal prospectus.

#### § 922.34 Designation.

(a) In designating an area as a National Marine Sanctuary, the Secretary shall publish a notice of the

ation in the Federal Register; this notice shall include the text of the final implementing regulations and shall also advise the public of the availability of the final management plan and the final EIS.

(b) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with section 304(b)(4) of the Act, beginning on the date of publication of the Federal Register notice in paragraph (a) of this section unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval consistent with section 304(b)(3) of the Act; or

(2) In the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor(s) of the affected state(s) certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state(s).

(c) If the Secretary determines that the actions in paragraph (b) of this section affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (b)(1) of this section or not certified under paragraph (b)(2) of this section shall take effect.

#### § 922.35 Coordination with States.

(a) The Secretary shall consult and cooperate with affected states throughout the national marine sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with a federally approved state coastal zone management program. For the purposes of a consistency review by states with a federally approved coastal zone management programs, designation of a national marine sanctuary is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with any approved state coastal zone program provided by section 307(c)(1) of the

Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR Part 930, Subpart C.

(2) Ensure that relevant state agencies are consulted prior to holding any public hearings pursuant to § 922.31(i)(2).

(3) Provide the Governor an opportunity to certify the designation or any of its terms as unacceptable as specified in § 922.34(b)(2).

#### Subpart D—Implementation After Designation

##### § 922.40 General.

(a) The Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities, and conducting such research and education as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with the sanctuary management plan, the Secretary shall develop and implement a site-specific contingency and emergency-response plan designed to protect the sanctuary resources. The plan shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

(c) Where essential to prevent immediate, serious and irreversible damage to sanctuary resources, activities including those not listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed one hundred and twenty (120) days, during which time an appropriate amendment of the terms of the designation shall be sought by the Secretary.

(d) Every five years, or sooner, the Secretary shall evaluate the substantive progress toward implementing the management plan and the goals of a designated sanctuary, especially the effectiveness of site-specific management techniques.

##### § 922.41 Enforcement procedures.

The consolidated civil procedure regulations, set forth at 15 CFR Part 904, shall apply to all enforcement matters under the Act.

#### Appendix 1 to Part 922—National Marine Sanctuary Program Site Identification and Selection Criteria for Marine Areas with Qualities of Special National Significance

##### Background

The Site Evaluation List (SEL) was established in 1983 (48 FR 35568, August 4, 1983). Only sites on the SEL may be considered by the Secretary for subsequent review as "Active Candidates" for designation.

The original SEL was based on the then existing Marine Research, Protection, and Sanctuaries Act, which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. It consisted of twenty-nine (29) marine sites with high natural resource values, identified and recommended for inclusion on the SEL by regional resource evaluation teams in accordance with the National Marine Sanctuary Program's mission and goals and then existent site identification and selection criteria (48 FR 24298, May 31, 1983). The Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498) amended the Act to add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites.

Areas of nationally significant research and educational qualities were considered in establishing the original SEL. These qualities are inherent in sites possessing significant conservation, recreational, ecological, or esthetic value. Therefore, additional areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.21 of the regulations.

Sites possessing nationally significant historical resources were not specifically considered when establishing the original SEL. There are no historical sites on the SEL. The existing SEL now needs to be amended to add areas of the marine environment possessing historical qualities of special national significance. Thus, the existing site identification and selection criteria have been amended to incorporate more specific criteria to identify and select areas of the marine environment possessing historical qualities of special national significance.

##### Site Identification and Selection Criteria

The following criteria are grouped into four categories: (1) Natural resource values; (2) human use/historical resource values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the National Marine Sanctuary Program and are designed to ensure that sites recommended to NOAA for SEL consideration have high natural resource and human resource values.

In selecting sites for the SEL, NOAA also considers the extent information on the site is available, existing and potential activity impacts and management concerns (as presented in sections III and IV, below). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of the site as not qualified for sanctuary status.

At the SEL stage, NOAA's prime focus is on the site's natural resource and human use/historical resource values. The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Marine Protection, Research, and Sanctuaries Act emphasizes the protection and management of marine areas which are of special national significance based on the site's conservation, recreational, ecological, historical, research,

educational or esthetic qualities. Other, more specific issues are factored into NOAA's decision whether to select a site as an Active Candidate (see Subpart C of the regulations).

To determine if an area possesses historical values of special national significance and otherwise meets the Sanctuary designation standards specified in Section 303 of the Act, certain definitions and criteria are included in this appendix (see II.F) for use in evaluating these potential sites for listing on the SEL in accordance with § 922.22 of the regulations.

### I. Natural Resource Values

#### A. Subregional Representation

The area under consideration is representative of the biogeographic subregion in which it is located.

*Examples:* This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

#### B. Community Representation

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (*i.e.*, on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

*Examples:* (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and gradation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a variety of ecological communities associated with the east Florida reef tract.

#### C. Biological Productivity

The area under consideration is significant in relation to its level of primary and/or secondary production.

*Examples:* (1) East Breaks at the edge of the continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provides energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

*Note:* This example also meets Criterion I.F.

(4) In many cases, coral reefs are not only energetically self-sustaining (*i.e.*, they

produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (*i.e.*, products that are imported and conserved).

#### D. Biotic Character/Species Representation

The area under consideration is of special interest because it supports:

- (1) Ecologically limited species;
- (2) Ecologically important species; or
- (3) Unique species associations or biological assemblages.

*Examples:* (1) This criterion would apply to marine habitat areas upon which ecologically limited species (*e.g.*, threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands Marine Sanctuary, which supports one of the most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin abalone, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central Texas.

#### E. Species Maintenance

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migration areas.

*Examples:* (1) The waters off Point Reyes and the Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California sea lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/ breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

#### F. Ecosystem Structure/Habitat Features

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

*Examples:* (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a

drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing often have unique physical and ecological characteristics, high production, and species diversity/population densities which are often greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of the Gulf Stream/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

*Note:*—This example also meets Criterion I.C.

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts, varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

### II. Human Use/Historical Resource Values

#### A. Fishery Resources of Recreational Importance

The area under consideration contains fish and shellfish species, species groups (*e.g.*, snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

#### B. Fishery Resources of Commercial Importance

The area under consideration contains fish and shellfish species, species groups (*e.g.*, snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

#### C. Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

*Examples:* (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Gulf of the Farallones National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Gulf of the Farallones National Marine Sanctuaries provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and snorkeling enthusiasts from all over the world.

(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

#### D. Research Opportunity

The area under consideration provides exceptional opportunities for research in marine science and resource management.

*Examples:* (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to development and use of marine resources.

#### E. Interpretive Opportunity

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

*Examples:* (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems including open ocean, fringing coral reef, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond traditional educational tools such as brochures and pamphlets.

#### F. Historical, Cultural, Archeological or Paleontological Significance

The area under consideration contains (or is likely to contain) historical resources of special national significance.

##### Definitions

The term "historical" as defined in § 922.2(c) means possessing historical, cultural, archeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures, and human activities and events. The term is used in the broad sense to refer to both pre-historic and historic periods, to the anthropological concept of culture, and to the processes, events, places, and objects related to the human past. The phrase

"special national significance" in the context of historical areas denotes those areas with historical values of unique national significance and which are illustrative of the nation's maritime heritage.

##### Criteria for Identification and Selection

The site identification criteria to be used by the Marine Historical Resource Evaluation Team to make its recommendation to the Secretary and the criteria to be used by the Secretary for selection of recommended sites for inclusion on the SEL are the same.

To qualify for recommendation to the Secretary and for selection for listing on the SEL because of a site's historical values, a site must have special national significance within the meaning set forth below in paragraphs (1) and (2) and meet the programmatic requirements set forth in paragraph (3). In determining whether a site has special national significance, the site's contribution to the historical resources already represented in the National Marine Sanctuary Program, if any, shall also be considered.

(1) *Determination of Significance*—The National Historic Landmark (NHL) Program (36 CFR Part 65), administered by the Department of the Interior, focuses attention on properties of exceptional value to the nation as a whole. It is the Federal means of weighing the national significance of historical resources. Properties designated as NHLs that are not already listed on the National Register of Historic Places are automatically listed there. In addition to adding historical units to the National Park System, NHL designation is a prerequisite for determining the eligibility of historical resources for nomination to the World Heritage List.

Consistent with the Marine Research, Protection, and Sanctuaries Act directive that the management of special marine areas complement existing regulatory authorities to the extent practicable, the criteria for nomination as a NHL shall be used as the first step in evaluating the historical, cultural, archeological or paleontological significance of a marine resource (See Table 1). Sites of national significance demonstrated by their designation as NHLs, or considered in consultation with the Department of the Interior and other appropriate authorities as meeting the NHL criteria, shall be further evaluated for recommendation for selection and evaluation for addition on the SEL, in accordance with paragraphs (2) and (3), below. Sites within the jurisdiction of the United States which have international significance as determined by the criteria for nomination to the World Heritage List shall also be evaluated (See Table 2).

(2) *Determination of Representative Distribution*—In addition to having national significance, a site, in order to be recommended or selected, must complement or contribute to the desired range of historical resources of the National Marine Sanctuary Program. Consistent with the Program's mission and goals set forth in § 922.1 of the regulations, sites recommended or selected for historical qualities must be illustrative of the nation's maritime heritage and representative of the nation's most significant historical marine resources.

(3) *Additional Programmatic Requirements*—In addition to having special national significance to qualify for recommendation and selection for addition to the SEL, coordinated and comprehensive conservation and management of the site including: (a) resource protection; (b) scientific research and monitoring; and (c) public education must be necessary in order to derive maximum present and future public benefit from the site's resources. Designation of a site as a National Marine Sanctuary must also complement existing regulatory authorities and improve the protection and preservation of the site's resources.

#### Additional Factors in Site Identification and Selection

##### III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

##### IV. Management Concerns

###### A. Relationship to Other Programs

While some sanctuaries may be designed to protect resources not currently managed by other existing programs (e.g., the U.S.S. *MONITOR* on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the National Marine Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, national marine sanctuary designation could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other programs' efforts such as national estuarine research reserves, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

###### B. Management of a Conservation Unit

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation

unit amenable to effective management given fiscal and staff constraints of the managing entities.

#### C. Accessibility

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to factors which limit or enhance public access to a particular site.

#### D. Surveillance and Enforcement

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surveillance and the capabilities of responsible agents (e.g., U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types of resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, personnel, equipment, and budgetary requirements.

#### E. Economic Considerations

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by ensuring long-term protection for commercially significant resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent feasible, a decision to include a proposed site on the SEL will take into consideration the economic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic effects of sanctuary designation.

#### Table 1.—National Historic Landmarks Program Selection Criteria (36 CFR 65.4)

**Specific Criteria of National Significance:** The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design,

setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen, exceptionally valuable for a study of a period, style or method of construction or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves if persons of transcendent importance, or from an

exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

#### Table 2.—Criteria for Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which have been nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

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