

# **National Marine Sanctuaries Act**

## **Fishing Regulations**

### **Frequently Asked Questions (FAQs)**

**5/12/23**

Pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), NOAA:

“shall provide the appropriate Regional Fishery Management Council [(Council)] with the opportunity to prepare draft fishing regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. . . . Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.”

Through the section 304(a)(5) process, NOAA provides the relevant Council with the opportunity to propose any draft fishing regulations it may deem necessary to implement a proposed sanctuary (if new) or the goals and objectives of an existing sanctuary. NOAA recognizes the Council’s role under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and its familiarity and expertise with regard to the resources and fishing activities in the relevant region, and is committed to working with the Council throughout this process.

#### **How are goals and objectives for a proposed sanctuary determined?**

- The goals and objectives for a proposed sanctuary are defined by NOAA and informed by the purposes and policies of the NMSA, specific guidance provided by Congress or a Presidential memorandum, state and federal agencies, tribal partners, input from the public during the designation process, and the contents of the nomination package (if the proposed sanctuary originated with a nomination).
  - The purposes and policies of the NMSA are identified in section 301(b) (16 USC 1431(b)) include:
    - “to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes”;
    - “to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural historical, cultural, and archaeological resources of the National Marine Sanctuary System”;
    - “to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas”;
    - “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities”; and
    - “to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations,

international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas.”

**How does the national marine sanctuary designation process affect fisheries management?**

- National marine sanctuaries conserve marine species and ecosystems while promoting compatible uses, and have a long history of working with recreational and commercial fishermen and the Council management system under the MSA.
- Pursuant to section 304(a)(5), NOAA provides relevant Councils with the opportunity to propose any draft fishing regulations it may deem necessary to fulfill the proposed goals and objectives of a proposed sanctuary. This role creates a process for NOAA to leverage and learn from the Council’s expertise, as well as familiarity with the resources and the fishing activities in the region.
- NOAA’s decision to reject or accept a Council’s recommendation is determined on a case-by-case basis. NOAA may use the NMSA, the MSA, or both, as appropriate, to promulgate and implement any regulations recommended by the Council or otherwise address fishery management requirements.
- NOAA will accept the Council’s recommended fishing regulations (including a recommendation that no additional fishing regulations are necessary) and, as appropriate, issue them as proposed regulations *unless* NOAA determines that the recommendation does not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary.
- Outside of the section 304(a)(5) process, the Council will continue to manage fishing within a national marine sanctuary under the MSA, provided that such management is consistent with applicable sanctuary regulations.

**What process does the Secretary use to determine whether the Council’s proposed fishing regulations, or a recommendation that additional regulations are not necessary, is consistent with the goals and objectives of the sanctuary?**

- NOAA evaluates any section 304(a)(5) recommendations from a Council against the purposes and policies of the NMSA, and the goals and objectives developed for the specific sanctuary. This process involves coordination among the relevant NOAA line offices with technical expertise on fisheries and sanctuary management, and is informed by the views of co-managing agencies, stakeholders, and the public.

**Based on the Council’s recommendation, what is the process for NOAA to issue fishing regulations in a national marine sanctuary?**

- If NOAA determines that the Council’s recommendation, which may be that no additional fishing regulations are necessary, fulfills the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary:
  - NOAA would accept the Council’s recommendation and work with the Council to prepare any recommended draft, proposed fishing regulations.

- NOAA would publish any proposed regulations, under the NMSA, the MSA, or both, for public comment.
- If NOAA determines that (all or part of) the Council's recommendation fails to fulfill the purposes and policies of the NMSA or the goals and objectives of the proposed sanctuary:
  - NOAA would reject the Council's recommendation (in whole or in part) and develop any draft fishing regulations – under the MSA, NMSA, or both – that the agency determines are necessary to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary.
  - Any proposed regulations would be published by NOAA for public comment.
  - Following the conclusion of the section 304(a)(5) process, NOAA would continue to welcome input from the Council as part of any public comment opportunity associated with the designation process.

**After regulations are in place, how are future amendments to fishing regulations made? Does a rejection of a Council's draft regulations prevent a Council from ever passing regulations that apply within a sanctuary?**

- Any future supplement to, or amendment of, the fishing regulations promulgated through the NMSA Section 304(a)(5) process must be drafted, approved, and issued in the same manner as the original regulations. Thus, the Council would be provided the opportunity to prepare draft regulations that fulfill the purposes and policies of the NMSA and the goals and objectives of the sanctuary in the future.
- Outside of the 304(a)(5) process, the Council may continue to manage fishing within a national marine sanctuary under the MSA, provided that such management is consistent with applicable sanctuary regulations.

**Does NOAA apply the provisions of 304(a)(5) differently for a newly proposed sanctuary than it does for an existing sanctuary?**

- No. Any amendments to fishing regulations for an existing sanctuary that were promulgated through the 304(a)(5) process must be drafted, approved, and issued in the same manner as the original regulations.
  - The same approach would apply for an ONMS-initiated effort to add fishing regulations for an existing sanctuary that previously did not directly regulate fishing under the NMSA.
- Outside of the 304(a)(5) process, the Council may continue to manage fishing within a national marine sanctuary under the MSA, provided that such management is consistent with applicable sanctuary regulations.

**Once NOAA has initiated a sanctuary designation, but before the NMSA section 304(a)(5) consultation process has concluded, are there any constraints on the Council's ability to manage fishing in an area proposed for sanctuary designation under the MSA?**

- Any fishing regulations necessary to implement the new national marine sanctuary would need to be promulgated – either under the NMSA or the MSA – by the effective date of the sanctuary designation. Unless and until NOAA promulgates sanctuary-specific

fishing regulations through the section 304(a)(5) consultation process, the NMSA does not operate to preclude any council-managed regulations in an area under consideration for designation as a national marine sanctuary. Once designated, NOAA maintains the ability to promulgate new fishing regulations for an area pursuant to the NMSA section 304(a)(5) process.

**How many national marine sanctuaries allow fishing? How many restrict fishing?**

- Some form of fishing, whether commercial, recreational or subsistence/traditional, is allowed in all national marine sanctuaries.
- While national marine sanctuaries may be designated to protect underwater ecosystems, and/or maritime and cultural heritage resources, they allow a variety of commercial and recreational uses.
- At sites where NOAA regulates some form of fishing under the NMSA, it most often does so through discrete spatial closures to protect sensitive habitats and through gear restrictions. For example, NOAA regulations prohibit the use of any gear except for conventional hook and line gear within Flower Garden Banks National Marine Sanctuary (15 CFR 922.122(a)(8)) and Office of National Marine Sanctuaries regulations prohibit certain recreational and commercial fishing activities within specific areas of the Florida Keys National Marine Sanctuary (15 CFR 922.164).

**How do sanctuaries add to existing management practices?**

- One of the purposes and policies of the National Marine Sanctuaries Act is “to provide authority for comprehensive and coordinated conservation and management of [ ] marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.”
- Sanctuary designation and management is intended to support, enhance, and further coordinate ongoing resource protection efforts rather than to complicate or replace them. This coordinated resource management approach is unique to each sanctuary, as developed through the designation process and, after designation, through ongoing collaboration and communication with our partners and the public.