



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

NOV - 3 2017

The Honorable Scott Walker
Governor
State of Wisconsin
P.O. Box 7863
Madison, WI 53707

Dear Governor Walker:

Thank you for your letter regarding the proposed Wisconsin-Lake Michigan National Marine Sanctuary. I appreciate the important questions you raised on behalf of the State of Wisconsin. Attached please find detailed answers to your questions.

If you have additional concerns or questions regarding the sanctuary designation process, please contact Makeda Okolo in NOAA's Office of Legislative and Intergovernmental Affairs at (202) 482-5935.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Gallaudet".

RDML Tim Gallaudet, Ph.D., USN Ret.
Assistant Secretary of Commerce
for Oceans and Atmosphere and
Acting Under Secretary of Commerce
for Oceans and Atmosphere

cc: John Armor, Director, Office of National Marine Sanctuaries



State Sovereignty

1. What authority does the state maintain in the NMS?

The State of Wisconsin would maintain all its authorities for the waters within the national marine sanctuary (NMS), and would continue to hold the beds of all lakes, ponds, and navigable rivers below the ordinary high-water mark in public trust. Under federal and State law, the State would continue to own title to the submerged land and maritime heritage resources included within the proposed sanctuary. The proposed national marine sanctuary recognizes the State's sovereignty over its waters and submerged lands but would allow NOAA to complement and supplement the existing state-led efforts in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431(b)(2)). For examples of how NOAA is proposing to complement and supplement the state-led efforts including preservation efforts, research programs, and public outreach initiatives please see the proposed management plan (<https://sanctuaries.noaa.gov/wisconsin/wisconsin-proposed-deis-dmp.pdf>).

2. Are any current laws superseded by the sanctuary?

No current laws would be superseded by the proposed national marine sanctuary. The National Marine Sanctuaries Act gives NOAA the authority to manage national marine sanctuaries in a manner that complements existing regulatory authority (16 U.S.C. 1431(b)(2)).

3. Who will be responsible to enforce the proposed restrictions in the zone?

NOAA works with the U.S. Coast Guard to enforce sanctuary regulations in the Great Lakes. Since NOAA does not have enforcement officers in the Great Lakes, NOAA would work with State partners to explore options for assistance in the enforcement of sanctuary regulations. Developing a plan to facilitate voluntary compliance with sanctuary regulations is another element of proactive enforcement included in the proposed sanctuary's draft management plan.

Regulations Within and Areas Outside of the NMS

4. Why was the ordinary high-water mark chosen as the border for the NMS?

The proposed landward boundary of the sanctuary is the state-designated ordinary high water mark (OHWM) and was chosen because it is a current, known regulatory boundary. The State's authority over shipwrecks extends to the OHWM, and NOAA's proposal for the national marine sanctuary boundary is consistent with the State's authority.

The sanctuary proposal uses this consistent boundary so that NOAA and the State can co-manage all Wisconsin shipwrecks within the boundary. A single boundary also eliminates confusion that might arise if there were two separate boundaries. Using the water's edge for a boundary, for example, would create a "moving" sanctuary boundary where cultural resources were variously within or beyond the sanctuary boundary, depending on lake levels at a given time.

5. Will there be restrictions on property owners whose land borders the NMS?

No, NOAA's proposal to designate a national marine sanctuary only includes regulations that would apply to state-owned maritime heritage resources located lake-ward of the ordinary high water mark (OHWM). NOAA does not intend, nor should the proposal to designate the national marine sanctuary be interpreted, as changing riparian property rights.

6. Will any changes be made to property owners existing rights under current state law?

No, NOAA's proposal to designate a national marine sanctuary would not change existing riparian rights of the property owners of Wisconsin, nor would it change State law regarding public access to the area in which shoreline property owners have exclusive access. NOAA does not intend, nor should the proposal to designate the national marine sanctuary be interpreted, as changing riparian rights. The proposal recognizes the state's sovereignty over its waters and submerged lands.

7. Will citizens maintain the ability to use the NMS for fishing and recreation without having to apply and pay for special use permits in the waters and beaches in the NMS?

The proposed national marine sanctuary does not include any restrictions on fishing or other types of recreation that do not damage maritime heritage resources. The scope of the proposed sanctuary regulations are narrowly focused on protection of maritime heritage resources and activities that could damage those resources. The State of Wisconsin would continue to maintain its authority to regulate fishing in the proposed national marine sanctuary. Special use permits from NOAA would only be needed for a very limited list of activities (please see <https://sanctuaries.noaa.gov/management/permits/special.html>).

8. Does the sanctuary impact commercial or sport fishing activities? If so, what are the restrictions that will be imposed? Are there opportunities to change the restrictions in the future? Who has the authority to change the restrictions? What roles would the state place in any such changes?

The proposed national marine sanctuary regulations do not include restrictions on commercial or sport fishing activities that do not damage maritime heritage resources. The scope of the proposed sanctuary regulations are narrowly focused on preventing injury to maritime heritage resources. The State of Wisconsin would continue to maintain its authority to regulate fishing in the proposed national marine sanctuary.

If NOAA sought to expand the sanctuary's regulations to manage sanctuary resources other than maritime heritage resources, that would constitute a change in the terms of sanctuary designation. Under Section 304 of the National Marine Sanctuaries Act (16 U.S.C. 1434) the terms of designation may be modified only using the same procedures by which the original designation was made. This procedure includes public review and comment, public hearings, preparation of an environmental impact statement, and review periods for the Governor and Congress. The procedure also provides the Governor authority to certify to NOAA that the

designation, or any of its terms, is unacceptable, in which case the designation or the unacceptable term shall not take effect in State waters. The State of Wisconsin, as a co-manager, would be involved in all discussions about proposed changes.

9. Several of the cities located along the NMS are important ports, if the designation is finalized can any dredging or alternation of the lake bed be carried out?

NOAA is committed to ensuring that the creation of the Wisconsin - Lake Michigan National Marine Sanctuary supports businesses and organizations that use the lake and surrounding ports and recognizes that commercial shipping on the Great Lakes is an important activity that supports the nation's economy.

The scope of the proposed national marine sanctuary regulations are narrowly focused on maritime heritage resources. All activities that do not adversely impact maritime heritage resources would continue to be carried out in compliance with existing state and federal laws. With regard to dredging activities within sanctuary boundaries, the likelihood of historically significant maritime heritage resources within regularly dredged areas found within the boundaries of the proposed sanctuary is low as indicated in the draft environmental impact statement. If during the State's review of proposed dredging activities a maritime heritage resource is identified, then the State and NOAA would consult on the permitting process. Additionally, NOAA is proposing to exclude the ports, marinas, and harbors of Two Rivers, Manitowoc, Sheboygan, and Port Washington from the national marine sanctuary boundaries to avoid any unintended consequences of designation on commercial operations.

Protection for Wisconsin

10. What recourse would citizens of Wisconsin have if they have problems with NOAA management? How will NOAA be accountable to the citizens of Wisconsin?

NOAA is proposing this national marine sanctuary with the State of Wisconsin as a co-manager. A Memorandum of Agreement between NOAA and the State will address how both entities will work together to manage the maritime heritage resources, and how any co-management issues will be resolved. NOAA is also proposing to establish a sanctuary advisory council, made up of diverse interests from the public with meetings open to the public to discuss sanctuary management. Under the National Marine Sanctuaries Act, sanctuary advisory councils are established to provide advice and recommendations to the superintendent on issues including management, science, service, and stewardship (16 U.S.C. 1445A).

11. Can NOAA issue fines to people who might pick up a piece of debris?

The proposed national marine sanctuary regulation on moving, removing, recovering, or possessing sanctuary resources is limited by definition to "all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including but not limited to, all shipwrecks and related components." This proposed definition of sanctuary resources mirrors the state's definition of submerged cultural resources. NOAA is proposing to

prohibit damage to these resources and to implement outreach programs that educate the public how to avoid unintentionally damaging the resources, both to preserve the resources and to facilitate voluntary compliance with the regulations. In the event of a violation of the sanctuary regulations on resources within the sanctuary, NOAA has several enforcement tools that range from a written warning to notice of violation that could result in a fine. Those enforcement tools only apply to sanctuary resources and sanctuary regulations.

12. Can the borders of the NMS be changed without the consent of the state of Wisconsin?

No, if NOAA sought to expand the sanctuary's boundary, that would constitute a change in the terms of designation. Under the National Marine Sanctuaries Act, a change in the terms of designation, including boundary changes, requires NOAA to go through the same process that was undertaken for designation, including public notice and comment, public hearings, preparation of an environmental impact statement, and review periods for the Governor and Congress. These processes also includes Section 304(b)(1), which provides the Governor of Wisconsin authority to certify that a term of a designation, including a proposed boundary expansion, is unacceptable, and the expansion of the boundary will not take effect in state waters. The State of Wisconsin, as a co-manager, would be involved in all discussions about proposed changes.

13. What prevents future administrations from enlarging the NMS beyond its current borders?

The requirements for changes to terms of designation, including enlarging the proposed NMS boundaries, are established in the National Marine Sanctuaries Act (NMSA) and would apply to any future administration.

14. What prevents future administrations from changing the rules and regulations related to the NMS? If the rules and regulations are proposed for a change, what role does the state play? Can the state object and thereby prevent further restrictions in and around the NMS?

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that the terms of designation include sanctuary boundaries; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. As discussed above, these terms may be modified only by the same procedures by which the original designation was made, including public notice requirements, and the process for the Governor of the State to certify that a changed term is unacceptable (i.e., objects), and the change will not take effect in state waters. If a regulatory change does not require changes to the terms of designation, NOAA would have to follow the procedures of the Administrative Procedure Act (5 U.S.C. 553), requiring adequate public notice and opportunity for public comment on the new regulations. The State of Wisconsin, as a co-manager, would be involved in all discussions about proposed changes to terms of designation and regulatory changes.