



***The National Marine Sanctuary Program:
Application to the Great Lakes***

GREAT LAKES COMMISSION STAFF

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**Great Lakes Commission
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Introduction

At its annual meeting in Pittsburgh (October 1982) the Great Lakes Commission requested the staff to prepare an assessment of the National Marine Sanctuary Program, with particular focus on the Program's application to the Great Lakes. This preliminary paper is presented to the Commission for review and comment and to provide a basis for determining future action. The Transportation and Economic Development Committee is taking the lead in initial discussion of potential Commission action. Comments from all Commissioners and advisors are welcome.

The National Marine Sanctuary Program was established in 1972 by passage of the Marine Protection, Research and Sanctuaries Act of 1972. The Act was amended in 1980 and new revised regulations for implementation have recently been proposed. The Program is administered through the Sanctuary Programs Office (SPO) of the National Oceanic and Atmospheric Administration (NOAA), in the Department of Commerce.

The Program Development Plan document dated January 1982 described the mission of the Program as "the establishment of a system of national marine sanctuaries based on identification, designation and comprehensive management of special marine areas for the long-term benefit and enjoyment of the public." This mission statement is supported by four program goals which generally incorporate resource protection, research promotion and coordination, public awareness and allowance for compatible public and private use. The Program Development Plan also sets out a revised nomination/designation process - see appendix for sketch of process. These "procedural refinements" as SPO describes them are intended to reduce delay and uncertainty in the site selection and approval process. The need for changes in the Program became apparent as the Program evolved and administrators gained experience with its implementation.

Congressional interest in a national sanctuaries program for marine areas culminated in 1968 with the introduction of pertinent legislation. Four years later passage was achieved. Authority for the establishment of marine sanctuaries was included as part of a bill which also addressed the subject of ocean dumping of wastes. Growing environmental awareness at this time focused not only on littoral and off-shore pollution problems but on issues of land-use governance which were extended to seabed activities.

Only two national marine sanctuaries were established during the first five years of the Program. Today, there are four additional sanctuaries. The six are: U.S.S. Monitor wreck off the coast of N. Carolina; coral reef tracts near Key Largo and Looe Key, Florida; a live bottom (reef) off of the Georgia coast; and two Pacific island marine areas off of the California coast. These sites range in size from 5-square nautical miles to over a thousand square nautical miles. The present sanctuaries constitute an initial stage of the Program. Other proposed marine sanctuary areas near Puerto Rico, American Samoa

and Hawaii are in the designation process. The Sanctuary Program Office envisions a larger sanctuary system that would include a greater variety of ecosystems but would be small enough to provide for effective management. The eventual number of sanctuaries is expected to be less than forty.

Through its ten-year history, the Program has generated considerable controversy. Nomination procedures used during most of this period were a major source of difficulty. In some cases, sanctuary sites were proposed that were technically acceptable under board-based evaluation criteria but were generally inappropriate due in part to public controversy. As these sites accumulated on a List of Recommended Areas (LRA), much public confusion resulted with respect to the status of the site and prospects for eventual designation. Another difficulty with the Program during this period was the lack of clear direction for individual sanctuary management. Management plans are being prepared for each site but the lack of coordination with the designation process has resulted in a frustrating implementation lag. The U.S.S. Monitor Management Plan released in 1982 is the only Plan completed to date. Questions continue regarding the program goal of multiple use. The SPO, in recognition of these and other program deficiencies, has launched a new effort to resolve the problem and promote the Program.

This present approach is revealed in the 1982 publication of the Program Development Plan and the official proposal of revised regulations. The proposed regulations were published on September 7, 1982 in the Federal Register. Final regulations will be published after a review of comments received (comment period closed on November 8, 1982).

A significant change from prior policy is the replacement of the List of Recommended Areas with a Site Evaluation List. Site identification criteria have been revised and a new evaluation process adopted. The final stage in the establishment of a sanctuary is its official designation and revised regulations pertaining to the designation process have also been drafted.

Process for Establishment of a National Marine Sanctuary

The current process began with the selection of a resource evaluation team comprised of knowledgeable scientists for eight national geographic areas including the Great Lakes. NOAA named a team leader for each area and that person, in turn, selected the team. The team then conducts an examination of its region for the purpose of classifying and identifying potential sanctuary sites. All existing "LRA" sites will be provided to the teams for consideration during the present selection phase of the Program. The next team effort is the use of specific site evaluation criteria to assess potential sites. After this activity, sites that merit continued review are compiled into an initial regional list which is available for public review. After public review, a final list (not more than 5 candidate sites) is to be submitted to NOAA by the regional team.

NOAA, after a period of internal review and analysis, selects from the regional lists sanctuary candidate sites for inclusion on a Site Evaluation List (SEL). Final selection for the SEL is expected by March 1983. Other sites may be added to the SEL only if it is an important new discovery of national significance. From the SEL, NOAA will select "active candidates" and thereby initiates the marine sanctuary designation process. Before

determination of active candidate status for a potential site, NOAA is required to consult with all relevant governmental agencies and units and solicit additional comments from the public. Within 90 days from the initiation of this consultation step, NOAA must reach a decision on active candidate status and officially give notice of its decision. NOAA consideration of the sites on the SEL must include the preparation of a written analysis of each site. Furthermore, active candidate selection must be based on the value of the site and on a balancing of relevant considerations including "ecological conditions, immediacy of need, timing and practicality, and public comment."

Because of these considerations and budget and staff time, etc., the number of active candidate sites will be limited at any given time. Once a site becomes an active candidate, a draft designation document and draft management plan must be prepared. Once again, consultation with interested persons and agencies takes place. The draft designation materials will include a draft environmental impact statement. NOAA is required to hold site area public meetings during the development of these documents and also hold a public hearing in the area not less than 30 days after official notice is given. Finally, after further state government and appropriate federal agency consultation, NOAA will publish the designation document and implementing regulations. The marine sanctuary then becomes official, unless within 60 days of publication the governor of the site-state declares all or certain provisions unacceptable (remaining provisions become law) or Congress adopts a resolution of disapproval.

Great Lakes Considerations

The selection process for marine sanctuary sites in the Great Lakes is presently underway. The initial phase of the process as developed under the new proposed rules was NOAA's contracting with the Washington-based consulting firm, Chelsea International Corp., to evaluate credentials of possible resource team leaders. Chelsea chose Dr. A.M. Beeton from the University of Michigan as the Great Lakes team leader. Dr. Beeton is the Director of the University's Great Lakes and Marine Waters Center. In early 1982 Dr. Beeton chose three other individuals to serve on the team. The first meeting of the team took place in May 1982. In early May, prior to the meeting date, the only industry representative and non-university faculty team member resigned --- reason is unknown to author.

The Great Lakes team compiled an initial list of ten proposed sanctuary sites and made it available for public comment - deadline for comment was September 10, 1982. Prior to the site nomination deadline on October 11, 1982, another site was proposed by the public. This site, Mid-Lake Superior, Michigan and Minnesota, was considered by the resource team at its second meeting on October 11, 1982. The team found that portions of the Mid-Lake Superior site (near Isle Royale) met sanctuary criteria and decided to modify an existing Apostle islands candidate site to include portions of the new proposal. The ten sites remain under consideration until a public comment deadline for the modified site passes January 10, 1983. A final list is expected to be submitted to NOAA in January, 1983. The list cannot include more than five recommended sites.

Two problems arose during this phase of the selection process. Apparently, the U.S. Great Lakes maritime industry was not given timely notice through standard dissemination means (mailing lists, etc.) as other interest

groups supposedly were. The other difficulty which occurred but appears to be resolved was the provision for the nomination deadline to succeed the public comment period. A new comment period was opened up for only the "modified" site proposal. These two procedural "irregularities" have resulted in some concern among the various Great Lakes interests who believe that a timely opportunity to be heard and participate is essential.

Even though there are no marine sanctuaries designated for the Great Lakes, it is likely that future NOAA consideration of recommended Great Lakes sites will result in the placement of sites on the Site Evaluation List and selection of one or more sites as an "active candidate." The basis for this possibility is found in language of the Program Development Plan. It states "the minimum number (of marine sanctuaries) should be large enough to provide adequate representation of the diverse coastal, marine and Great Lakes ecosystems in the United States." The unique fresh-water resources of the Great Lakes deserve serious consideration for prospective marine sanctuary site designation(s). In addition, one cannot discount the apparent importance of geographic-political balance to the national sanctuary program.

Preliminary candidate sites identified by the Great Lakes resource evaluation team as of January 1983 are: (site name) Apostle Islands modified (Lake Superior-Wisconsin and Michigan), Southern Lake Michigan Reefs (Michigan-Wisconsin), Green Bay (Lake Michigan - Michigan and Wisconsin), Straits of Mackinac (Michigan), Thunder Bay (Lake Huron - Michigan), St. Clair River Delta (Michigan), Maumee Bay (Lake Erie - Michigan and Ohio), Western Lake Erie Islands including Sandusky Bay (Ohio), Long Point-Erie Moraine (Lake Erie-Pennsylvania), and Cape Vincent (Lake Ontario-New York).

The program goal of multiple use has particular significance for the Great Lakes area. Commercial navigation and fishing coexist with substantial recreational boating and other use activity. The major concern that inevitably surfaces during discussion of possible sanctuary sites on the Lakes is the need for compatible use and resource development. Whether it be shipping, dredging, shoreline development, or chemical pollution, etc., the matter of promoting a particular use and protecting environmental resources may conflict. Reconciling the occasional competing claims will become a chief responsibility for those administering the Marine Sanctuary Program.

Commercial operations affecting the Great Lakes may be significantly affected by the designation of a sanctuary. Lake-side power plants, municipal water systems, commercial fishing, recreational boating, hydrocarbon exploration and development and commercial shipping are examples of activity categories that may be impacted.

Potential conflicts with commercial vessel operations warrant further discussion. The new regulatory philosophy emanating from Washington and the Sanctuary Program Office suggests a more conciliatory approach on multiple use of designated sanctuaries. If a particular multiple use (vessel transit and resource protection, etc.) is not feasible for a site, NOAA has several options. One approach may be a determination by NOAA not to include a resource team's recommended site on the SEL or a negative decision on appropriateness for "active candidate" status. Another approach is to tailor the Management Plan to provide for compatible and reasonably acceptable use. Present sanctuaries do regulate commercial vessel operations.

Principal regulatory measures encompass a wide range of proscribed activities. Dredging and material disposal operations are often forbidden. Anchoring and discharge of various substances may also be ruled out. Vessel operations within a certain distance of islands or shore or over a particular site can be outlawed. Within the Great Lakes, these kind of regulations could pose serious difficulties for commercial navigation. Those sites near deltas, harbors and in connecting channels are special problems. Dredging requirements and natural shallow conditions make these areas vulnerable to unacceptable vessel passage regulation. Other areas, far from shore or those that bridge land areas, may necessitate vessel movement rules in order to protect from discharge activities or turbidity problems. In either case difficulties may occur. It remains to be seen if regulations could be devised to permit existing and expected future levels of Great Lakes vessel traffic in or near sanctuary areas. Outside of published regulations, The Management Plan is the likely vehicle to set out rules for acceptable mitigation measures or reconciling of potential conflicting uses.

An unusual feature of the Marine Sanctuary Program as applied to the Great Lakes is the potential for difficulties over federal/state jurisdiction. New Program rules seek enhanced federal coordination with the states in sanctuary administration. Because all Great Lakes sites would necessarily involve state waters, the involvement of state government(s) is imperative. Problems regarding conflicting regulations and legal preemption may occur. The separation of management responsibility activities may not cause as much difficulty as the need to coordinate regulatory control where historical "procedures" are already in place. Such procedures may include existing relevant statutory law and programs such as a coastal zone management program. Appropriate state agencies may become "on-site" sanctuary managers with possible authority also for enforcement of regulations and facilitation of Program goals. A state's ultimate recourse rests with the provision for a governor's veto of all or part of a sanctuary designation.

Summary

The Marine Sanctuary Program, administered by NOAA, is undergoing a partial face-lift. New implementing regulations have been proposed which will modify and improve the sanctuary site selection and approval process. The Program has gradually evolved from its 1972 inception. A new site selection phase is currently underway.

This new phase will incorporate an emphasis on scientific input and greater responsiveness to public review. The intent of this approach is to ensure careful site nominations as well as encourage maximum public and private compatible use of designated sanctuaries.

In the Great Lakes, a resource evaluation team will recommend in January 1983 up to five sites to NOAA for further selection consideration. For a number of reasons it is likely that the Great Lakes will be represented in the national sanctuary system. Before and during the designation process, there will be additional opportunities for public comment and review.

The Great Lakes present certain unique opportunities and problems for the Program. First, the fresh-water ecosystem is without parallel in the nation and the world. All potential sites would be in state waters and federal/state jurisdictional problems would likely occur. Also, the multiplicity of current Great Lakes water uses suggest that this historical background should guide and shape future Marine Sanctuary Program application to the region.

APPENDIX

NATIONAL MARINE SANCTUARY PROGRAM

NOMINATION/DESIGNATION PROCESS*

SITE IDENTIFICATION
EVALUATION

EIGHT REGIONAL EVALUATION TEAMS -
NOAA SELECTS TEAM LEADERS AND LEADERS
SELECT 2-5 MEMBERS (MAY BE COORDINATED
THROUGH CONTRACT FIRM)

REGIONAL RESOURCE EVALUATION TEAM -
SURVEY (APPLY SITE IDENTIFICATION
CRITERIA)

INITIAL LIST OF SITES

PUBLIC REVIEW (MAY BE COORDINATED
THROUGH CONTRACT FIRM)

FINAL REGIONAL LIST
(3 to 5 Sites)
RECOMMENDATIONS TO NOAA

SITE EVALUATION
LIST (SEL)

NOAA SELECTS SEL

FR NOTICE WRITTEN
WRITTEN ANALYSIS
OF HOW SITE MEETS
CRITERIA

PRELIMINARY
CONSULTATION

PUBLIC NOTICE
DISSEMINATE WRITTEN
ANALYSIS

ACTIVE CANDIDATES
(Active Candidate
Selection Starts
NEPA Process)

NOAA SELECTS
ACTIVE CANDIDATES

FR NOTICE

REGIONAL SCOPING
MEETING

FR NOTICE

DEIS, DRAFT MANAGEMENT PLAN
& PUBLIC HEARING

FR NOTICE ON
AVAILABILITY OF
DEIS

FEIS, FINAL MANAGEMENT PLAN
& FINAL CONSULTATION

FR NOTICE

SANCTUARY
DESIGNATION

PRESIDENTIAL APPROVAL

IMPLEMENTATION OF MANAGEMENT PLAN

* Much of this nomination/designation process chart is taken from the "Program Development Plan" published by NOAA's Sanctuary Programs Office in January, 1982.