

**HJR**

**7**

<TARGET><BILL>HJR 7</BILL><SUBJECT>HJR  
7</SUBJECT><COMM>HRES29</COMM></TARGET>

**HOUSE JOINT RESOLUTION NO. 7**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE EDGMON**

**Introduced: 1/21/15**

**Referred:**

**A RESOLUTION**

1 **Opposing the proposed designation of an Aleutian Islands National Marine Sanctuary.**

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS**, in June 2014, the National Oceanic and Atmospheric Administration  
4 reestablished the process by which communities may submit applications to have the National  
5 Oceanic and Atmospheric Administration consider nominations of areas of the marine and  
6 Great Lakes environments as national marine sanctuaries; and

7 **WHEREAS** the National Oceanic and Atmospheric Administration has stated that  
8 "every nomination starts at the community level"; and

9 **WHEREAS**, while the Sanctuary Nomination Process Guide published by the  
10 National Oceanic and Atmospheric Administration calls for "community-based support for  
11 the nomination," it also includes a definition of "communities" that is so broad it is essentially  
12 meaningless; and

13 **WHEREAS** a collection of predominantly non-Alaska organizations led by the  
14 Washington, D.C., based Public Employees for Environmental Responsibility has nominated  
15 an area of approximately 554,000 square nautical miles--nearly equal to the entire landmass  
16 of the state--to be designated as the Aleutian Islands National Marine Sanctuary; and

1           **WHEREAS** the designation of the proposed Aleutian Islands National Marine  
2 Sanctuary would make permanent all current restrictions on fishing and other commerce and  
3 would potentially authorize additional permanent restrictions that would prove burdensome to  
4 present and future economic activity in the region; and

5           **WHEREAS** concerns noted in the nomination have been and are currently being  
6 vigorously addressed through a variety of institutions and measures; and

7           **WHEREAS** 277,100 square nautical miles of the Aleutian Islands are already  
8 designated as a habitat conservation area; and

9           **WHEREAS** fishing in the region has long been under the conscientious, effective  
10 stewardship of local residents, the North Pacific Fishery Management Council, the Alaska  
11 Board of Fisheries, the National Marine Fisheries Service, and the Alaska Department of Fish  
12 and Game; and

13           **WHEREAS** the Aleutian Islands are subject to the North Pacific Fishery Management  
14 Council's Aleutian Islands Fishery Ecosystem Plan, which provides for heightened scientific  
15 scrutiny to assess and enrich the health of the ecosystem, the sustainability of fisheries, and  
16 the well-being of communities in the region; and

17           **WHEREAS** risks associated with shipping are being addressed through the ongoing  
18 Aleutian Islands Risk Assessment, which includes the development of the Optimal Response  
19 System to increase towing, salvage, and spill response capabilities in the region; and

20           **WHEREAS**, in December 2014, President Obama withdrew the 32,500,000-acre  
21 North Aleutian Basin Planning Area from oil and gas leasing, and, in any case, oil and gas  
22 development in the region is not feasible in the foreseeable future; and

23           **WHEREAS** strong Environmental Protection Agency regulations are already in place  
24 to address potential issues involving invasive species; and

25           **WHEREAS**, at this time, the legislature is unaware of any support from local  
26 communities, local tribes, or other local groups for this nomination; and

27           **WHEREAS**, in the wake of the Public Employees for Environmental Responsibility  
28 nomination, the Aleutians East Borough Assembly, the federally recognized Agdaagux Tribe  
29 of King Cove, and the Akutan Traditional Council have published official declarations of  
30 their strong opposition to the creation of an Aleutian Islands National Marine Sanctuary;

31           **BE IT RESOLVED** that the Alaska State Legislature is vehemently opposed to the

1 nomination by the Washington, D.C., based Public Employees for Environmental  
2 Responsibility for the creation of an Aleutian Islands National Marine Sanctuary.

3 **COPIES** of this resolution shall be sent to the Honorable Penny Pritzker, United  
4 States Secretary of Commerce; the Honorable Kathryn Sullivan, Ph.D., Under Secretary of  
5 Commerce for Oceans and Atmosphere and National Oceanic and Atmospheric  
6 Administration Administrator; and the Honorable Lisa Murkowski and the Honorable Dan  
7 Sullivan, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the  
8 Alaska delegation in Congress.



## Sponsor Statement

### House Joint Resolution 7 Oppose Aleutian National Marine Sanctuary

CSHJR 7 declares the Legislature's opposition to a nomination made by the Washington, D.C., based Public Employees for Environmental Responsibility (PEER) for the creation of an Aleutian Islands National Marine Sanctuary.

In June of 2014 the National Oceanic and Atmospheric Administration (NOAA) re-established the process by which communities may submit applications to have NOAA consider nominations of areas of the marine and Great Lakes environments as national marine sanctuaries. The following December, a collection of predominantly non-Alaskan organizations, led by PEER, submitted a nomination to designate an area of approximately 554,000 square nautical miles—nearly equal to the entire landmass of the state of Alaska—as a national marine sanctuary.

Although on January 23<sup>rd</sup>, 2015, NOAA informed PEER that its nomination was not sufficient to warrant further consideration, the agency also invited the group to revise and resubmit a nomination.

Under the PEER proposal, all current restrictions on fishing and other commerce in the vast region would be made permanent, and new restrictions that would likely prove burdensome to present and future economic activity would be added.

In its information on the nomination process, NOAA states that "every nomination starts at the community level" and calls for "community-based support for the nomination." However, it appears that the groups led by PEER never consulted the dozens of local communities that would bear the brunt of the creation of a sanctuary.

Currently, CSHJR 7's sponsor is unaware of any support for the creation of an Aleutian Islands National Marine Sanctuary from local communities, local tribes, or other local groups. In fact, recently the Aleutians East Borough Assembly, the federally recognized Agdaagux Tribe of King Cove, the Akutan Traditional Council, the City of Sand Point, and the City of Adak have published official declarations of their strong opposition.

Through HJR 7, the Legislature joins local residents of the Aleutians in voicing its profound disapproval of the Washington D.C. based PEER's nomination, and any similar nomination, to create an Aleutian Islands National Marine Sanctuary.



## **Explanation of Changes Between HJR 7 and CSHJR7(FSH)**

HJR 7 was revised in the committee substitute to reflect that on January 23, 2015, two days following the introduction of the resolution, the National Oceanic and Atmospheric Administration (NOAA) informed the Public Employees for Environmental Responsibility (PEER) that its nomination to create an Aleutian Islands National Marine Sanctuary was not sufficient to warrant further consideration. However, in the same notification, NOAA invited PEER to revise and resubmit a nomination.

The substantive revisions in the CS include:

- inserting an additional “whereas” on Page 3, Lines 3 through 7, which notes NOAA’s response to PEER
- the addition of the phrase “or any similar nomination” in the “resolve” on Page 3, Line 10, in order to address the possibility of the submission of a revised nomination by PEER or other entities.

# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version: HJR 7  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HJR7-LEG-SESS-02-04-15  
Title: OPPOSE ALEUTIAN NATIONAL MARINE  
SANCTUARY  
Sponsor: EDGMON  
Requester: House Fisheries

Department: Alaska Legislature  
Appropriation: Legislative Operating Budget  
Allocation: Session Expenses  
OMB Component Number: 782

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version
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Prepared By: Jessica Geary, Finance Manager  
Division: Legislative Affairs Agency  
Approved By: Pamela Varni, Executive Director  
Agency: Legislative Affairs Agency

Phone: (907)465-6626  
Date: 02/04/2015 10:25 AM  
Date: 02/04/15

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

BILL NO. HJR 7

**Analysis**

This legislation has zero fiscal impact on the Legislative Affairs Agency.



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE**

**Office of National Marine Sanctuaries**  
1305 East-West Highway  
Silver Spring, Maryland 20910

January 23, 2015

Richard Steiner  
Box 666  
9138 Arlon St., A3  
Anchorage, AK 99507

Dear Mr. Steiner:

Thank you for submitting the nomination for the proposed "Aleutian Islands National Marine Sanctuary." We appreciate your interest in how a national marine sanctuary could assist in meeting conservation objectives for waters surrounding the Aleutian Islands and southwest Alaska.

This letter is to inform you that the Office of National Marine Sanctuaries (ONMS) has completed its sufficiency review of the nomination. The sufficiency review is the first of three phases of review, and determines if the nomination provides enough of the information required for us to proceed with a more in-depth review. It is followed by phase two, which reviews a nomination against the four national significance criteria and phase three, which evaluates a nomination against the seven management considerations. We have concluded the nomination, as submitted, is not sufficient.

Our rationale for reaching this conclusion focuses primarily on management consideration #7, which indicates a national marine sanctuary nomination must demonstrate support for the national marine sanctuary concept from a breadth of community interests. In our final rule, we define a community as individuals or locally-based groups (e.g., "friends of" group, chamber of commerce); tribal, local, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

When ONMS considers this aspect of a nomination, we are not looking for unanimous support from all potential interests, but rather representative support from a diverse cross section of the community. In the context of the Aleutian Islands nomination, this could mean adjacent tribal or local governments, organizations or industries that depend on the resources in the nominated area, or federal or state agencies responsible for managing some of the resources or adjacent marine protected areas referenced in the nomination.

Similarly, the nomination does not clarify the level of support from the federal and state agencies listed as potential management partners. For management consideration #6, it is equally important to identify any offers of partnership from tribal governments, local jurisdictions, non-government organizations, or universities to assist in managing this area.



We also conclude that the nomination provides little to no description as to how this area provides opportunities for education, such as specific partnerships and commitments from educational groups. This relates to management consideration #2, which requests information on how the nominated area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

Finally, the nomination's description under national significance criteria #2 (submerged maritime heritage resources) states the nominated area "contains submerged maritime heritage resources of special historical, cultural, or archaeological significance...consistent with listing on the National Register of Historic Places." It then identifies several land-based National Historic Landmarks, as well as shipwrecks and potential archaeological sites that appear to all be within Alaska state waters. However, page 3 of the nomination identifies the proposed sanctuary to include "all federal waters along the entire Aleutian Islands archipelago (from 3 to 200 nautical miles north and south of the islands..." As a result, the nomination seems to indicate both inclusion and exclusion of state water resources.

We understand the significant challenges associated with organizing support for an area that covers over 550,000 square nautical miles and over a thousand miles of shoreline. An alternative could be to consider nominating a smaller area or a series of smaller areas that encompass the specific resources you believe to be of highest value or for which a national marine sanctuary designation could achieve the greatest benefit. Keep in mind that the nomination process is a community-based process and hence the demonstration of wide community support weighs very heavily within the management considerations.

As you reconsider your nomination, staff from our West Coast Regional Office, as well as our headquarters, stand by to address any questions you have. We encourage you to review other nomination packages we have received and our correspondence with the nominators, which are available on the website [nominate.noaa.gov](http://nominate.noaa.gov). The process is transparent and you will also find our correspondence with other nominators on the website. Thank you again for your interest in NOAA's national marine sanctuaries. We look forward to continuing work with you on this important nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Basta". The signature is stylized and cursive, written over a white background.

Daniel J. Basta, Director

# THE SANCTUARY NOMINATION PROCESS

View the [Federal Register Notice: Re-Establishing the Sanctuary Nomination Process](https://www.federalregister.gov/articles/2014/06/13/2014-13807/re-establishing-the-sanctuary-nomination-process) (<https://www.federalregister.gov/articles/2014/06/13/2014-13807/re-establishing-the-sanctuary-nomination-process>)

Billing Code 3510-NK-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

Docket No. 130405334-3717-02

RIN 0648-BD20

#### Re-establishing the Sanctuary Nomination Process

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule and call for Nominations.

**SUMMARY:** With this final rule, NOAA re-establishes the process by which communities may submit applications to have NOAA consider nominations of areas of the marine and Great Lakes environments as national marine sanctuaries. Communities, in this context, are defined as a collection of interested individuals or groups (e.g., a friends of group, a chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association). Through this nomination process, NOAA is seeking to give communities an opportunity to identify special marine and Great Lakes areas they believe would benefit from designation as a national marine sanctuary. There is no requirement for who may nominate an area for consideration; however, nominations should demonstrate broad support from a variety of stakeholders and interested parties. This rule contains the criteria and considerations NOAA will use to

evaluate national marine sanctuary nominations, describes the process for submitting national marine sanctuary nominations, and promulgates the regulations necessary to implement this action. If NOAA determines a nomination adequately meets the final criteria and considerations, it may place that nomination into an inventory of areas for the NOAA Administrator, as delegated from the Secretary of Commerce, to consider for designation as a national marine sanctuary. As such, NOAA is not designating any new national marine sanctuaries with this action. In issuing this rule, NOAA replaces the currently inactive Site Evaluation List with a new process for communities and other interested parties to work collaboratively and innovatively in their submission of national marine sanctuary nominations. The re-opening of the sanctuary nomination process was supported by the majority of the nearly 18,000 comments NOAA received on its proposed rule issued June 28, 2013.

**DATES:** This final rule will be effective on June 13, 2014.

**ADDRESSES:** You may submit nominations to NOAA by any one of the following methods:

- **Electronic Submissions:** Submit nomination packages to [sanctuary.nominations@noaa.gov](mailto:sanctuary.nominations@noaa.gov) (<mailto:sanctuary.nominations@noaa.gov>).
- **Mail:** Director, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

All nomination packages will be posted in full upon submission to NOAA at [www.nominate.noaa.gov](http://www.nominate.noaa.gov) (<http://www.nominate.noaa.gov>). Do not submit confidential business, personal, sensitive, or protected information in a nomination. Personal information within all nominations will be kept confidential consistent with 5 U.S.C. 552 (b)(6).

**FOR FURTHER INFORMATION CONTACT:**

For general questions regarding the sanctuary nomination process, please contact Matt Brookhart, Chief, Policy & Planning Division, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, [matt.brookhart@noaa.gov](mailto:matt.brookhart@noaa.gov) (<mailto:matt.brookhart@noaa.gov>).

For specific interest in nominating areas off Maine to North Carolina, or the Great Lakes, contact Reed Bohne, Northeast and Great Lakes Regional Director, NOAA Office of National Marine Sanctuaries, 10 Ocean Science Circle, Savannah, GA 31411, [reed.bohne@noaa.gov](mailto:reed.bohne@noaa.gov) (<mailto:reed.bohne@noaa.gov>).

For specific interest in nominating areas off South Carolina to Florida, the Gulf of Mexico, or the Caribbean, contact Billy Causey, Ph.D., Southeast Atlantic, Gulf of Mexico and Caribbean Regional Director, NOAA Office of National Marine Sanctuaries, 33 East Quay Road, Key West, FL 33040, [billy.causey@noaa.gov](mailto:billy.causey@noaa.gov) (<mailto:billy.causey@noaa.gov>).

For specific interest in nominating areas off California to Alaska, contact William Douros, West Coast Regional Director, NOAA Office of National Marine Sanctuaries, 99 Pacific Street, Suite 100F, Monterey, CA 93940, [william.douros@noaa.gov](mailto:william.douros@noaa.gov) (<mailto:william.douros@noaa.gov>).

For specific interest in nominating areas in the Pacific Islands, contact Allen Tom, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, 726 South Kihei Road, Kihei (Maui), HI 96753, [allen.tom@noaa.gov](mailto:allen.tom@noaa.gov) (<mailto:allen.tom@noaa.gov>).

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access:**

This *Federal Register* document is also accessible via the Internet at

<http://www.access.gpo.gov/su-docs/aces/aces140.html>

(<http://www.access.gpo.gov/sudocs/aces/aces140.html>).

#### **I. Background**

The National Marine Sanctuaries Act (NMSA or Act, 16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to identify and designate as national marine sanctuaries areas of the marine environment, including the Great Lakes, which are of special national significance; to manage these areas as the National Marine Sanctuary System (System); and to provide for the comprehensive and coordinated conservation and management of these areas and the activities affecting them in a manner which complements existing regulatory authorities. Section 303 of the NMSA provides national marine sanctuary designation standards and factors required in determining whether an area qualifies for consideration as a potential national marine sanctuary, and section 304 establishes procedures for national marine sanctuary designation and implementation. Regulations implementing the NMSA and each national marine sanctuary are codified in Part 922 of Title 15 of the Code of Federal Regulations (CFR).

NOAA developed its first formal process for identifying and evaluating sites for consideration as national marine sanctuaries, known as the List of Recommended Areas (LRA), in the late 1970s (44 FR 44831). In 1983, NOAA replaced the LRA with the Site Evaluation List (SEL) (48 FR 24295). As defined in NOAA regulations at 15 CFR 922.3, the SEL was a list of natural and historical marine resource sites selected by the Secretary as qualifying for further evaluation for possible designation as national marine sanctuaries. The SEL was initially developed by regional review panels comprised of marine scientists associated with regionally-specific academic institutions or marine management authorities, and was intended to be reviewed and updated by NOAA every five years. When it was published in 1983, the SEL included 29 sites (48 FR 35568), four of which were subsequently designated as national marine sanctuaries: Flower Garden Banks (1991), Stellwagen Bank (1992), Western Washington Outer Coast (renamed Olympic Coast, 1994), and Thunder Bay (2000) national marine sanctuaries

(NMS). The list of sites on the 1983 SEL can be found at [http://sanctuaries.noaa.gov/management/fr/48\\_fr\\_35569.pdf](http://sanctuaries.noaa.gov/management/fr/48_fr_35569.pdf) ([http://sanctuaries.noaa.gov/management/fr/48\\_fr\\_35569.pdf](http://sanctuaries.noaa.gov/management/fr/48_fr_35569.pdf)).

When the Site Evaluation List was established, the criteria for nominating areas to the list focused primarily on the natural resource qualities that made an area eligible for national marine sanctuary designation (48 FR 35568). The Marine Sanctuaries Amendments Act of 1984 (Pub. L. No. 98-496) added historical, research and educational qualities to the list of designation criteria. In 1988, NOAA issued a final rule (53 FR 43801) reflecting these amendments and, in 1989, announced it would consider new sites for the SEL consistent with these revised criteria (54 FR 53432). Ultimately, no new sites were added to the 1983 SEL.

In 1995, the ONMS Director deactivated the SEL (60 FR 66875) to focus on management of the existing twelve national marine sanctuaries, including expanding community engagement (the designation process for Thunder Bay National Marine Sanctuary, which was completed in 2000, began before deactivation of the SEL). Since then, ONMS has focused primarily on maturing management at the existing national marine sanctuaries through comprehensive management plan review, characterization of site resources, partnership building, and operational growth. At the same time, public interest in the designation of new national marine sanctuaries has grown. A variety of individuals, local, state, tribal governments, Congressional representatives, academic institutions, citizen groups, and non-government organizations from around the country have requested NOAA, the Department of Commerce, and the President to consider designating specific areas as new national marine sanctuaries. These requests often reference the many and diverse benefits communities realize from a national marine sanctuary, including: meaningful protection of nationally significant marine resources; significant social and economic benefits from expanded travel, tourism, and recreation, as well as ocean-related jobs; increased opportunity for, and access to, federal research focused on local marine resources; education programs to promote ocean literacy, sustainable uses, and stewardship; and community-driven problem solving for a myriad of ocean issues.

NOAA considered re-establishing the sanctuary nomination process in the context of both the active community interest and the overall maturing of the System over the past two decades, including lessons learned from previous nomination processes. On June 28, 2013, NOAA issued a proposed rule to re-establish the sanctuary nomination process (78 FR 38848) and requested public comment on: 1) the completeness and utility of twelve draft criteria for evaluating areas of the marine environment as possible new national marine sanctuaries; 2) NOAA's proposed process steps for receiving sanctuary nominations; and 3) proposed amendments to ONMS regulations. This final rule addresses the nearly 18,000 comments NOAA received on the proposed rule (see section VI), and finalizes the criteria, management considerations, and process to nominate areas of the marine and Great Lakes environments for potential addition

to the inventory of areas that may be considered for future designation as a national marine sanctuary. The final step of the sanctuary nomination process is addition to the inventory.

NOAA is not designating any new national marine sanctuaries with this action. Any designations resulting from the nomination process would be conducted by NOAA as a separate process, and within the public participation standards enacted by the NMSA and National Environmental Policy Act. NOAA will follow all standards and requirements identified in the NMSA when, in the future, it considers a nomination for designation.

## **II. Description of Action**

The purpose of this final rulemaking is to:

1. Provide public notice that NOAA has re-opened the public process to nominate areas of the marine and Great Lakes environments for consideration as national marine sanctuaries;
2. Provide the final criteria and considerations NOAA will use to evaluate new national marine sanctuary nominations for inclusion in an inventory of areas that may be considered for future designation as national marine sanctuaries;
3. Describe the process by which areas are nominated and evaluated by NOAA for potential inclusion in an inventory of areas that may be considered in the future as national marine sanctuaries; and
4. Identify changes to various sections of the ONMS regulations at 15 CFR 922.

The sanctuary nomination process will focus on nominations generated collaboratively by communities (as defined above) and coalitions of interested parties. It will replace the currently inactive Site Evaluation List, which tended towards an agency-driven, top-down approach, with a more grassroots, bottom-up approach to national marine sanctuary nominations. NOAA is not considering evaluation of sites from the deactivated Site Evaluation List. The public may re-nominate sites from the deactivated Site Evaluation List, per the final evaluation criteria, and resubmit these areas for NOAA's consideration.

NOAA will begin accepting new nominations following the effective date of this final rule, and in accordance with collection-of-information requirements under OMB control number 0648-0682 (see Section VIII, B below for a full discussion of Paperwork Reduction Act requirements).

## **III. Nomination Criteria and Considerations**

In its June 2013 proposed rule, NOAA asked the public to comment on twelve criteria for nominating areas as possible national marine sanctuaries. The twelve proposed criteria were based on national marine sanctuary designation standards in section 303 (b) of the NMSA. Many of the public comments included suggestions on how to further

refine the criteria to be more useful or operational in the nomination phase. The comments included broad suggestions for more detail, suggestions specific to one or more of the proposed criteria, suggestions on which criteria to emphasize, and suggestions that some of the proposed criteria did not fit the definition of criteria and would be better described as “considerations.” NOAA also received comments asking for more information on whether there would be a minimum number of criteria that an area would need to meet to be accepted into the inventory.

Based on these comments, NOAA developed four final criteria to evaluate the national significance of a nomination, and seven considerations for management of the area as a national marine sanctuary. These national significance criteria and management considerations remain consistent with the designation standards in section 303(b) of the NMSA while providing more specificity and clarity for nominating communities. While NOAA is not establishing a minimum number of national significance criteria, nor giving greater significance to any particular criterion, the strongest nominations will provide a clear connection and focus on the criteria most relevant to the goal and intent for the nominated area, and provide as much information as possible for those criteria. Nominations should provide information addressing all seven management considerations, with special emphasis on consideration #7, describing community-based support. Nominations will not be judged against each other with regard to completeness or robustness of criteria and considerations. NOAA’s final evaluation will be based on a qualitative analysis of a nomination’s ability to demonstrate the relevant national significance criteria and management considerations; the agency will not apply a numerical value or score to any nomination.

#### **A. National Significance Criteria:**

1. The area’s natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.
2. The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility for listing on the National Register of Historic Places<sup>1</sup>; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.
3. The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area’s resources.

4. The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

<sup>1</sup>Source, 36 CFR Section 60.4: The National Register of Historic Places evaluation criteria are for resources:

- a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- b) that are associated with the lives of significant persons in our past; or
- c) the embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d) that have yielded or may likely yield, information important in history or prehistory.

#### **B. Management Considerations:**

1. The area provides or enhances opportunities for research in marine science, including marine archaeology.
2. The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.
3. Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.
4. A national marine sanctuary would provide unique conservation and management value for this area or adjacent areas.
5. The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.
6. There are commitments or possible commitments for partnership opportunities such as cost sharing, office space, exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.
7. There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

#### **IV. Process for Submission and Evaluation of Nominations**

In its June 2013 proposed rule, NOAA requested comments on the proposed process for submitting and evaluating nominations. In general, commenters requested NOAA provide more detail about the process, including how the agency would make decisions on nominated areas and timelines for review. NOAA has developed its final process based on how the agency currently anticipates implementation of the review process. If this process evolves over time, NOAA will notify the public of changes to the review process. NOAA anticipates its review process of a nomination will take between three to six months, although additional time may be required for review of more complex nominations. The final nomination process is summarized in the following six steps:

**Step 1) Nomination Development.** The nomination process begins with a community-based development of a nomination. There is no requirement for who may nominate an area for consideration; however, nominations should demonstrate broad support from variety of stakeholders and interested parties. The nomination should also identify the specific goal or intent for nominating a national marine sanctuary. Any nomination must provide the information necessary to adequately address the national significance criteria relevant to the nominator's goal for nominating (and ultimately designating) that area as a national marine sanctuary, as well as information for all of the management considerations.

**Step 2) Nomination Submission.** The formal request for national marine sanctuary consideration occurs when the nominator formally submits a nomination to NOAA. The nomination should include a specific point of contact. There is no required form for the nominations; however, to guide nominators, NOAA has posted a nomination guide on the ONMS website ([www.nominate.noaa.gov](http://www.nominate.noaa.gov)). The maximum length for a nomination is not to exceed 25 pages, including attachments. All nominations will be made publicly available in their entirety on the ONMS website. Do not submit confidential business, personal, sensitive, or protected information in a nomination. Personal information within all nominations will be kept confidential consistent with 5 U.S.C. 552 and other federal laws. NOAA encourages nominators to contact NOAA if there are questions about what to include or what will be posted online. The nominator shall not deliver any copyrighted information without first acquiring for or granting to the Government a copyright license for the information. There are no deadlines for submission of nominations while the nomination process is open. NOAA encourages electronic submissions be sent to [Sanctuary.Nominations@noaa.gov](mailto:Sanctuary.Nominations@noaa.gov) (<mailto:Sanctuary.Nominations@noaa.gov>), but will accept paper applications by mail as well. All nominations should be addressed to: Director, NOAA Office of National Marine Sanctuaries. The mailing address is 1305 East West Highway, SSMC4 11th Floor, Silver Spring, MD 20910.

**Step 3) Sufficiency Review.** Once NOAA receives a nomination, the agency will review it for sufficiency against the national significance criteria and management considerations. This initial review will determine if the nomination has enough information for NOAA to adequately conduct a subsequent, more detailed review

based on the significance criteria and management considerations. NOAA will strive to complete its sufficiency review within thirty (30) days of receiving a nomination. Once complete, NOAA will inform the nominator that either the nomination is moving to the next stage of review, or additional information is needed to complete the nomination. In some cases, NOAA may determine that a nomination is insufficient and will decline the nomination. In those cases, NOAA will provide the nominator with a letter of rationale in support of its decision to decline the nomination. The letter of rationale will also be posted on NOAA's nomination website. A nominator may resubmit a revised nomination for an area that has been declined by the agency.

**Step 4) National Significance Review.** Nominations NOAA determines to be sufficient will then be reviewed against the national significance criteria identified in Section III.A of this final rule. NOAA will strive to complete the national significance review within thirty (30) days of the nomination being determined to be sufficient. When necessary, NOAA may conduct an external peer review to provide additional expertise on a nomination's ability to meet the national significance criteria. Any external review is expected to add thirty (30) days to the review timeline. The composition of the external peer review group will be based on the expertise needed for that nomination. There will not be a standing review group and each reviewer will provide their own recommendation. NOAA will not seek a consensus recommendation from any peer review group. The outcomes of the external peer review, if needed, will be considered in NOAA's determination of the national significance of the nominated area. Once its review is complete, NOAA will notify the nominator of one of the three possible outcomes: 1) the nomination moves on to the next step of review; 2) NOAA requires additional information to determine the nominated area meets the national significance criteria; or 3) the nomination does not meet the national significance criteria and is declined with a letter of rationale.

**Step 5) Management Review.** Nominations NOAA determines to meet the national significance criteria will then be reviewed against the management considerations identified in Section III.B of this final rule. NOAA will strive to complete its management review after thirty (30) days of the nomination being determined to be nationally significant. NOAA will discuss the nomination with interested tribal or state governments during this review when the area is in proximity to tribal or state lands. Similarly, NOAA will discuss the nomination with Federal land managers in proximity to the nominated area. Any tribal, state, or Federal coordination is expected to add additional time to NOAA's review. NOAA encourages nominators to coordinate with relevant tribal and state governments, and relevant Federal land managers, before a nomination is submitted. Upon completion of the management review, NOAA will notify the nominator of one of three possible outcomes: 1) the nomination moves on to the next step; 2) NOAA requires additional information to determine the nominated area meets the management considerations; or 3) the nomination does not meet the management considerations and is declined with a letter of rationale.

**Step 6) Acceptance to Inventory.** Nominations that the ONMS Director deems to have successfully completed the reviews for sufficiency, national significance, and management considerations will be added to a standing inventory of areas NOAA could consider for national marine sanctuary designation. NOAA will send a letter of notification to the nominator, and then publish a Federal Register notice when an area has been added to the inventory. The inventory and notification letters will also be posted on the ONMS website. If NOAA takes no designation action on a nomination in the inventory, the nomination will expire after five years from the time it is accepted to the inventory.

Addition to the inventory is the last step in the nomination process. NOAA is not designating any new national marine sanctuaries with this action. Any designations resulting from the nomination process would be conducted by NOAA as a separate process, and within the public participation standards enacted by the NMSA and National Environmental Policy Act. NOAA will follow all designation standards and requirements identified in the NMSA when, in the future, it considers a nomination for designation.

Nominations will be reviewed in the order they are received by NOAA. During the development of a nomination, ONMS staff may answer questions on the criteria, considerations, process, or other general questions about national marine sanctuaries. Although not mandatory, NOAA encourages nominators to contact their respective ONMS Regional Directors at the address or email above for clarification on any questions relative to a nomination proposal. While NOAA is able to provide clarity and guidance on the criteria and considerations, it is the nominator's responsibility to research, write, and develop nominations.

If NOAA needs additional information during the nomination process, a request will be sent to the nominator, either by email, phone, or letter. The nominator should provide the requested information, or an estimate of additional time required to prepare the information, to the NOAA point of contact within thirty (30) days. If a response has not been received from the nominator within thirty (30) days, the nomination will be deemed withdrawn, and no further action will be taken on the nomination by NOAA. In those cases, the nominator may resubmit a nomination to NOAA for reconsideration.

## **V. Regulatory Amendments**

In this rulemaking, NOAA revises 15 CFR 922.10 to codify it is accepting nominations for potential national marine sanctuary designation, and providing the criteria and considerations it will use to evaluate nominations. NOAA is also:

- replacing the definition of the Site Evaluation List with a definition of "Inventory" in 15 CFR sections 922.3; and
- replacing references to the Site Evaluation List with references to the Inventory in 15 CFR sections 922.3 and 922.21(a).

Note that, through a separate rulemaking dated January 28, 2013, (78 FR 5998), NOAA proposed to revise regulations regarding the Site Evaluation List as part of a comprehensive regulatory review pursuant to Executive Order 13563. In that rulemaking, NOAA proposed to delete paragraph 922.10(c). That proposal is no longer necessary due to this rulemaking and NOAA will remove these references when that rulemaking is made final.

## **VI. Response to Public Comments**

*1. Comment:* The vast majority of the commenters supported the re-establishment of the sanctuary nomination process, stating it is an important first step toward filling gaps in ocean and Great Lakes protection. Many also commented that after 13 years with no new national marine sanctuary designations, a process to nominate new national marine sanctuaries is warranted. These commenters cited a number of reasons for support of new national marine sanctuaries, including general environmental protection, management of climate change, enhancing the value of coastal and ocean economies through recreation and tourism, and the community-based nature of the nomination process proposed by NOAA. Many of these commenters were also concerned about potential impact to the marine environment from oil and gas activities, and the role new national marine sanctuaries could play in helping to mitigate negative impacts.

*Response:* NOAA concurs, and believes it is appropriate to move forward with re-establishing the sanctuary nomination process.

*2. Comment:* Several commenters argued that the criteria lacked completeness and utility (e.g., were incomplete, too general, not appropriate, or not quantitative enough). Some commenters cautioned that the proposed criteria were too broad and would result in many underqualified nominations.

*Response:* NOAA has taken these comments into consideration to provide more clear and robust criteria that are a logical outgrowth of the twelve criteria put forward in the proposed rule. NOAA agrees that there were distinctions of use and applicability among the proposed twelve criteria, and with this final rule, has refined the language of the criteria and made their application more manageable by reorganizing related criteria into two categories – national significance criteria and management considerations. The refined criteria and considerations are consistent with, and do not change substantively, those listed in the proposed rule, but address public comments requesting that NOAA provide more clarity and specificity regarding the nomination standards. NOAA anticipates that the national significance and management categories will facilitate the submission of new national marine sanctuaries. The national significance criteria focus on whether an area is considered a special place worthy of Federal protection by addressing the ecological value, historical significance, economic uses, and publically-derived benefits of the area. The management considerations provide a more specific interpretation of the relevant NMSA Section 303

(b) designation standards, such as explicit recognition of partnership opportunities and specific definition of groups that could be included in the community supporting the nomination. NOAA describes in Section IV how it will use these two categories in the review process for evaluating nominations.

**3. Comment:** One commenter suggested that NOAA should remove the criteria that measures economic impact.

**Response:** The NMSA requires NOAA consider the economic benefits and impacts of the present and potential uses of national marine sanctuaries (NMSA Section 303 (b)(1) (I)). Sustaining local economies that rely on a healthy marine environment is an important goal at all national marine sanctuaries. NOAA cannot therefore remove this statutorily required criteria.

**4. Comment:** Commenters asked NOAA to include consideration and recognition of the importance of waterborne commerce in the designated area.

**Response:** NOAA believes the final rule includes the criteria necessary for considering compatible uses of national marine sanctuaries, including waterborne commerce. NOAA recognizes the vital importance of waterborne commerce, not only to communities but to the Nation and a vibrant economy.

**5. Comment:** Commenters suggested that the core criteria should be protection of natural resources, ecological qualities, and areas of historical, cultural, archaeological, or paleontological significance.

**Response:** The final criteria focus first on the national significance of a nominated area's biological and cultural resources, and which includes the considerations mentioned by the commenters. National marine sanctuaries are designated with the primary purpose of resource protection, and the value added to both local communities and the Nation, and any new national marine sanctuary designation would be considered within this context.

**6. Comment:** Commenters asked NOAA to ensure a criterion includes maintenance of endangered species and their critical habitat.

**Response:** The final national significance criteria include a provision that takes into account the value of an area in maintaining endangered species and their habitat. Consideration of endangered species and their habitat is also required under the Endangered Species Act.

**7. Comment:** Several commenters asked NOAA to consider the balance between protecting the health of the proposed area while providing access to and use of that area.

*Response:* The final national significance criteria recognize the significance of an area's natural and cultural resources, as well as its economic, use, and aesthetic values. Furthermore, the management considerations provide nominators the opportunity to identify the existing or potential management values of an area, and how those values may support a national marine sanctuary.

*8. Comment:* Several commenters suggested that the proposed rule did not provide the public with a good sense for how the criteria would be applied in deciding which nominations will be moved toward national marine sanctuary designation. Some commenters asked if there was a threshold or standard for each criterion.

*Response:* Consistent with the criteria in the proposed rule, NOAA has based the final criteria on section 303(b) of the NMSA. However, NOAA has refined the final criteria to be more operational in determining national significance and manageability, and in doing so believes the national significance criteria and management considerations set clear standards for nominating and evaluating an area as a national marine sanctuary. When appropriate, NOAA will conduct a third party external peer review to further evaluate a nomination's ability to meet the final criteria and considerations. Nominations will not be judged against each other with regard to completeness or robustness of criteria. NOAA's final evaluation will be based on a qualitative analysis of a nomination's ability to demonstrate the relevant national significance criteria and management considerations; the agency will not apply a numerical value or score to any nomination.

*9. Comment:* Several commenters asked NOAA to define the number of criteria that need to be met in order to have a successful nomination, and how those criteria will be measured. Commenters also asked NOAA if there were mandatory and optional criteria, and how the criteria relate to each other.

*Response:* There is no minimum number of national significance criteria a nominator needs to meet for a successful nomination. NOAA encourages nominations to include information on all of the criteria relevant to the specific goals and intent a nominator has for an area. Nominations with high maritime heritage value, for example, may require less or no information on the natural resource criteria. Similarly, NOAA is not requiring nominations with high natural resource value to declare or define high maritime heritage value if that value does not exist. Nominations with both high natural resource and maritime heritage value should, however, include information on both qualities. The strongest nominations will have a clear sense of all the national significance criteria relevant to that area, and provide as much information as possible for those criteria. Nominations should provide information addressing all seven management considerations, with special emphasis on consideration #7 describing community-based support. NOAA encourages nominators to contact their respective ONMS Regional Directors at the address or email above for clarification on any questions relative to a nomination proposal.

*10. Comment:* Several commenters requested NOAA ensure the criteria consider the current management structure and level of protection for the area proposed.

*Response:* NOAA recognized this issue in the proposed rule and has also included it in the final rule under management consideration #5 ("The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.").

*11. Comment:* Several commenters believed that the proposed process for evaluating nominations was incomplete and did not provide the public with a clear indication of how NOAA would proceed once it received nominations. They believed that several questions remained unanswered by the proposed regulations, including: who will make a decision on the nomination; how will the process be transparent; and how other agencies and regional fishery management councils are to be involved.

*Response:* NOAA has provided significant detail on the process for submitting national marine sanctuary nominations in section IV of the final rule, including what actions will occur at each of the six steps, possible outcomes of the process, opportunities for nominators to discuss the process with NOAA, and that the ONMS Director will determine at the end of the review if a nomination is accepted into the inventory. NOAA will also include this and additional details on the ONMS website. Other federal agencies and the regional fishery management councils may choose to include themselves as part of the nomination of a new national marine sanctuary. If in the future NOAA decides to begin designation for a nomination in the inventory, the NMSA defines the specific coordination and consultation requirements ONMS must follow with other Federal agencies and the respective regional fishery management councils.

*12. Comment:* Some commenters indicated that certain interested parties may not have the capacity to develop a nomination or have access to the information necessary to clearly demonstrate the criteria or management considerations. They asked if NOAA could provide technical services, assistance, or financial support for nomination development.

*Response:* NOAA may engage in discussion with communities as they develop and revise their nominations to provide informational assistance or recommendations. In some instances, the agency may be able to provide some technical services, but does not anticipate providing any financial support. It will be the responsibility of the nominators to acquire and synthesize the information necessary to develop their nomination.

*13. Comment:* Several commenters were concerned that if sites were "weighted" in value, that those focusing solely on historic and cultural resources would not score as high as those which also include ecological values, and that the process would be inherently biased against cultural resource nominations. These reviewers suggested

constructing two separate review processes; one for nominating ecologically-focused national marine sanctuaries and the other for maritime heritage-focused national marine sanctuaries, so that these nominations are not weighed against each other.

*Response:* NOAA will not be scoring the nominations individually or against each other, and will be looking at the merits of each nomination relative to the nominators' specific intent for their respective nomination and the relevant criteria. Per the NMSA, the final criteria recognize both biological and cultural resources as under consideration for possible national marine sanctuary designation. See NOAA's response to comment #9 above for additional information on how a nominator should consider the resources of their nomination.

*14. Comment:* Several commenters indicated they would like more transparency in the evaluation process once a nomination is received. They also suggested that NOAA develop and provide a timeline.

*Response:* Based on these comments, NOAA has revised its final criteria, management considerations, and process to provide more transparency and clarity. With regard to a timeline, the final rule indicates that NOAA will strive to complete the review process in 90 to 180 days (see section IV). Furthermore, when NOAA adds an area to the inventory for areas to consider for national marine sanctuary designation, it will stay active in the inventory for up to five years.

*15. Comment:* Several commenters questioned moving forward with the sanctuary nomination process given recent trends of the Federal budget, as well as the provisions within section 304(f) of the NMSA, "Limitation on Designation of New Sanctuaries."

*Response:* NOAA's purpose with this final rule is to re-open the process by which the public submits nominations to NOAA for consideration as new national marine sanctuaries. NOAA will address any resource issues, as well as NMSA section 304(f), when, in the future, it considers a nomination for designation. Designations of new national marine sanctuaries are not addressed in this action.

*16. Comment:* Several commenters asked NOAA to clarify how the nomination process for new national marine sanctuaries coincides with other government policy initiatives, such as the National Ocean Policy.

*Response:* While NOAA is implementing the sanctuary nomination process under the authority of the NMSA, this action also meets the goals of the National Ocean Policy Implementation Plan. The Implementation Plan includes a specific action to reactivate the ONMS Site Evaluation List (SEL). For the reasons stated in this preamble, NOAA is replacing the SEL with the sanctuary nomination process, but considers this action consistent with the Implementation Plan's goal of SEL reactivation. NOAA contemplates collaboration with other Federal agencies in management consideration #5 ("The existing regulatory and management authorities for the area could be supplemented or

complemented to meet the conservation and management goals for the area.”), as does section 301(b)(7) of the NMSA, which directs ONMS to develop and implement coordinated plans for the protection and management of national marine sanctuaries.

*17. Comment:* Several commenters asked NOAA to take into account the presence/absence of existing marine protected areas (MPAs) in the vicinity (e.g., who manages them, the extent they are currently working, etc.). Other commenters recommended or were concerned about the prospect of using the existing list of “special places” (e.g., MPAs) as a starting point as an existing inventory of worthy, nationally significant sites.

*Response:* A nominator may elect to include an existing protected area, such as marine reserve designated under state authority, as part of its nomination for a national marine sanctuary. However, nominators should consider that the final nomination criteria identified in this rule may be different from, or inconsistent with, the criteria applied to protected areas managed under other authorities. Nominators should consider the management scheme most appropriate for an area prior to submitting a nomination for a national marine sanctuary. While the NMSA is a robust and adaptive management tool that offers many alternatives for marine protection and conservation, as indicated by management consideration #4 (“A national marine sanctuary would provide unique conservation and management value for this area or adjacent areas.”), it may not be suitable for certain areas or certain types of resources.

*18. Comment:* Several commenters expressed concern over how tribal governments will be included in the process. Some commenters asked that NOAA include “maintenance of native cultures” in its final criteria, and recognize “tribal governments” in its list of existing authorities.

*Response:* Final management consideration #7 identifies the types of community support NOAA recommends for a nomination, and includes tribal governments. Further, as discussed in section IV of this final rule, if a nomination includes waters in proximity to tribal lands or areas with customary and usual use of treaty waters or stations, NOAA recommends the nominator discuss its nomination with the respective tribal government. If a nomination does not indicate tribal consultation for these types of areas, NOAA will request the nominator do so before continuing its review of the nomination. Should ONMS consider any nomination for national marine sanctuary designation, it would adhere to its consultation and coordination obligations under the NMSA and potential obligations under Section 106 of the National Historic Preservation Act with any tribal government included in, or in proximity to, the area. NOAA will also fulfill its obligations and responsibilities pursuant to Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

*19. Comment:* Some commenters suggested NOAA include the term “traditional use” in addition to subsistence use in its final criteria, noting that “traditional/native uses may be broader than subsistence and this would be a helpful clarification.”

*Response:* NOAA has added “subsistence and traditional uses” to National Significance Criterion #3 (“The area supports present and potential economic uses, such as tourism, commercial and recreational fishing, subsistence and traditional uses, diving, and other recreational uses that depend on conservation and management of the area’s resources.”)

*20. Comment:* One commenter asked NOAA to consider how a proposed area would maintain native cultures.

*Response:* If a proposed nomination includes or is in proximity to tribal lands, NOAA recommends the nominator consider the maintenance of tribal cultures in its proposal. In addition, NOAA has added “subsistence and traditional uses” to National Significance Criterion #3 (“The area supports present and potential economic uses, such as tourism, commercial and recreational fishing, subsistence and traditional uses, diving, and other recreational uses that depend on conservation and management of the area’s resources.”)

*21. Comment:* Some commenters suggested that the idea of making the process more “bottom up” and “community-driven” was unclear and may exclude the views of stakeholders outside of the immediate geography of a nominated area. Some of these commenters noted there are ocean areas where the resources are managed for the benefit of the Nation as a whole, not limited local user groups. These commenters wanted clarity on the role of “local” vs. “national” stakeholder groups, and more information on how NOAA defined “broad community support.” Commenters were also concerned about how NOAA would identify and evaluate support for the nomination to ensure that all voices with an interest are heard, not just the voices closest to the proposed area.

*Response:* NOAA provided a broad interpretation of ‘communities’ in the proposed rule, and acknowledges in this final rule that communities are not limited to a specific geography. To further emphasize this point, NOAA includes examples of what constitutes communities in its final management consideration #7 (“There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association.”)). NOAA believes this revised description of “communities” provides for a variety of interested parties to organize and submit national marine sanctuary nominations.

*22. Comment:* Several commenters asked for a clarification about the differences between the Site Evaluation List and the new sanctuary nomination process.

*Response:* The primary difference between the Site Evaluation List (SEL) and the sanctuary nomination process is that the sanctuary nomination process necessitates nominations be developed by the public in a grass roots, bottom up model that promotes community-based stewardship of special marine and Great Lakes areas. In contrast, the SEL relied almost solely on input from regional review panels comprised of academic experts and ocean management practitioners. NOAA believes the final criteria, management considerations, and nomination process provide specific, well-defined parameters for communities across the Nation to have a voice and opportunity to effectively nominate areas that meet the high standard of national marine sanctuary designation.

A secondary difference is that the sanctuary nomination process allows nominators to submit areas they feel best represent the most current marine and Great Lakes areas of national significance. All sites on the SEL were 20 or more years old and have likely experienced changes in resources (both ecological and cultural) and management. NOAA believes it prudent, therefore, to remove these sites as candidates for national marine sanctuary designation and allow the public to consider new areas. Nominators can submit areas on the SEL as part of the new sanctuary nomination process, but should ensure these areas are consistent with the final national significance criteria and management considerations.

*23. Comment:* Several commenters asked about the sites listed on the deactivated Site Evaluation List and requested that NOAA reconsider removing these sites from consideration.

*Response:* While the Site Evaluation List (SEL) was last active in 1995, most of the sites on the SEL were originally put on the list in the 1980s, and there have not been any recent efforts by NOAA to update information about those sites. Therefore, NOAA has determined it appropriate to remove the existing SEL sites as pre-existing areas for consideration as national marine sanctuaries. However, nominators can re-propose areas from the SEL per the final national significance criteria, management considerations, and process identified in this final rule. Following the process described in this final rule, NOAA will evaluate all nominated areas, including any that may have previously been on the SEL.

*24. Comment:* One commenter asked NOAA to provide more information on how the sanctuary nomination process would deal with nominations to de-designate a national marine sanctuary. This commenter suggested that the goal of the ONMS should be to return the areas to the state's control.

*Response:* Designation and de-designation of national marine sanctuaries are beyond the scope of this action. There are other means by which NOAA evaluates the effectiveness of national marine sanctuary management, including a rigorous

management plan review processes, that could consider changes in regulations and area of national marine sanctuary managed. This final rule does not contemplate the de-designation of any national marine sanctuary.

With regard to "returning areas to state control," this is not a goal of the NMSA. Many of the current national marine sanctuaries have strong partnerships with the respective state government, and NOAA anticipates these will continue in any future designation of a national marine sanctuary adjacent to, or in proximity to, state lands.

*25. Comment:* Some commenters had suggestions for amending ONMS regulations to align the sanctuary nomination process proposed rule with a January 2012 proposed rule issued by NOAA designed to clarify and update several ONMS regulations. Commenters suggested that the two rules were conflicting, and that NOAA should withdraw both rules and begin the process again with an advanced notice of rulemaking.

*Response:* In January 2012 (78 FR 5998), NOAA issued a proposal to amend national marine sanctuary regulations as part of a comprehensive regulatory review pursuant to Executive Order 13563. That action proposed to modify the Site Evaluation List (SEL) regulations so that rather than NOAA solely selecting potential sites from a periodically updated list (the SEL), the public would also be able to petition the agency for new national marine sanctuaries in areas not contemplated by the SEL.

Upon further analysis and after considering public comments on the June 2013 proposed rule for the sanctuary nomination process, NOAA believes the sanctuary nomination process described in this final rule provides a more structured process for stakeholder involvement in the nomination of new national marine sanctuaries. When NOAA ultimately revises its final rule for the January 2012 proposal to amend sanctuary regulations, it will address changes to the SEL prompted by the sanctuary nomination process.

*26. Comment:* Most commenters supported the regulatory amendments that were proposed. Some commenters suggested that the proposed amendment to 15 CFR 922.10 (b) be revised to include explicit steps for submitting a nomination. With regard to section 922.10(c), some commenters were concerned that NOAA simply stating "any further guidance issued by NOAA" could run afoul of the Administrative Procedures Act (APA). Another commenter suggested keeping section 922.21, but replacing references to SEL with references to "list of eligible candidates."

*Response:* NOAA agrees regarding 15 CFR 922.21, and has replaced the reference to SEL with a definition of "Inventory" (section 922.3). NOAA has also revised section 922.10 based on comments requesting more detailed information on the criteria, management considerations, and review process for national marine sanctuary nominations. NOAA has removed from the final rule the language "any further guidance issued by NOAA."

## **VII. Summary of Changes from the Proposed Rule**

With this final rule, NOAA has made several changes in response to comments and for purposes of clarity that are a logical outgrowth of the proposed rule. In the proposed rule, NOAA suggested using the twelve standards set forth in NMSA section 303(b) to evaluate nominations. Several public comments noted that these standards are too general for use as criteria and suggested that NOAA provide more clarity and specificity regarding their meaning and intent (see comments 2 through 6, and 10). In response to these comments, NOAA clarified the language of the proposed standards and grouped the standards into two categories, one addressing national significance and a second considers the management feasibility of a nomination. NOAA has revised the final rule to include four national significance criteria and seven management considerations, all of which are consistent with the standards of section 303(b) of the NMSA, as identified in the proposed rule. NOAA removed two proposed standards without substantively changing the proposed rule, as these standards were more appropriate for consideration during the national marine sanctuary designation process, rather than the nomination process. The removed standards focused on the manageability of an area as a national marine sanctuary and an area's value as an addition to the National Marine Sanctuary System.

NOAA added two additional measurements (as final management considerations) to this final rule that were a logical outgrowth of the proposed rule (management considerations #6 and #7). These considerations seek to determine the variety of community-based interest in a national marine sanctuary nomination, and the potential partnership opportunities associated with the specific area being nominated, both of which NOAA believes are essential to any future national marine sanctuary nomination. The public comments on the proposed rule and NOAA's experience with the current sanctuaries has shown that community engagement is critical to successful sanctuary management.

NOAA has also made revisions to the nomination review process based on the public comments on the proposed rule. The public requested additional clarity on the review steps that are described in six steps in this final rule.

Finally, NOAA has made changes to the regulatory amendments, by revising section 922.10, and adding a definition in section 922.3 to update the regulations with the new nomenclature for the sanctuary nomination process. NOAA has also revised section 922.21.

## **VIII. Classification**

### **A. Regulatory Flexibility Act**

At the proposed stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a

substantial number of small entities. NOAA received no comments on this certification, the rationale for which is contained in the proposed rule. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

**B. Paperwork Reduction Act**

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Nominations for national marine sanctuaries discussed in this final rule involve a collection-of-information requirement subject to the requirements of the PRA. OMB has approved this collection of information requirement under OMB control number 0648-0682.

The collection-of-information requirement applies to persons seeking to submit nominations to designate new national marine sanctuaries and is necessary to determine whether the nominated areas are consistent with the purposes and policies of the NMSA. Public reporting burden for this collection of information is estimated to average 29 hours per response (nomination and supporting documents), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**C. Executive Orders 12866 and 13563**

This rule has been determined to not be significant within the meaning of Executive Order 12866.

**D. National Environmental Policy Act**

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment, because this action is not creating or designating any new national marine sanctuaries. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03c.3(i) of NOAA Administrative Order 216-6. Specifically, this action is a notice of an administrative and legal nature. Should NOAA decide to designate a national marine sanctuary, each individual national marine sanctuary designation will be subject to case-by-case analysis, as required under NEPA and as outlined in section 304(a)(2)(A) of the NMSA.

**E. Information Quality Act**

Pursuant to Section 515 of Public Law 106-554 (IQA), this information product has undergone a pre-dissemination review by [insert Office], completed on [date]. The signed pre-dissemination review and documentation form is on file in that office.

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

Administrative practice and procedure, Amendments, Authorization, Commercial Fishing, Cultural Resources, Definitions, Designation, Ecology, Environmental protection, Habitat, Marine resources, Maritime Heritage, Natural resources, Nomination, Recreational fishing, Resources, Research, Traditional uses, Tourism, Water resources.

Dated: June 9, 2014

Holly A. Bamford, Ph.D.

*Assistant Administrator for Ocean Services and Coastal Zone Management*

Accordingly, for the reasons set forth above, NOAA amends 15 CFR part 922 as follows:

### **PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Amend § 922.3 to:

- a. remove the definition of "Active Candidate;"
- b. remove the definition of "Site Evaluation List"; and
- c. add the definition of "inventory" to read: *inventory* means a list of nominated areas selected by the Director as qualifying for future consideration of designation as a national marine sanctuary.

3. Revise Subpart B to read as follows:

Subpart B - Sanctuary Nomination Process

§ 922.10 General.

- a. The sanctuary nomination process (see National Marine Sanctuaries website [www.sanctuaries.noaa.gov](http://www.sanctuaries.noaa.gov)) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.
- b. National Significance Criteria. The Director will consider the following in determining if a nominated area is of special national significance:
  1. The area's natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

2. The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.
  3. The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.
  4. The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.
- c. Management Considerations. The Director will consider the following in determining the manageability of a nominated area:
1. The area provides or enhances opportunities for research in marine science, including marine archaeology.
  2. The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.
  3. Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.
  4. A national marine sanctuary would provide unique conservation and management value for this area that also have beneficial values for adjacent areas.
  5. The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.
  6. There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.
  7. There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).
- d. Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a

publicly available inventory for future consideration of designation as a national marine sanctuary.

- e. A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

§ 922.11 Selection of nominated areas for national marine sanctuary designation.

- a. The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.
- b. Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

4. Remove and reserve § 922.21.

5. Remove and reserve § 922.23.

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Revised: June 13, 2014 | You are here: <http://www.nominate.noaa.gov/rule.html>



# Public Employees for Environmental Responsibility

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December 22, 2014

Mr. Daniel J. Basta  
Director, NOAA Office of National Marine Sanctuaries  
1305 East West Highway, N/NMS, 11th Floor  
Silver Spring, MD 20910

## **RE: NOMINATION OF ALEUTIAN ISLANDS NATIONAL MARINE SANCTUARY**

Sent via U.S. Mail & Email: [sanctuary.nominations@noaa.gov](mailto:sanctuary.nominations@noaa.gov)

Dear Director Basta:

Pursuant to the final rule published in the *Federal Register* [15 CFR Part 922, Docket No. 130405334-3717-02, RIN 0648-BD20] Public Employees for Environmental Responsibility (“PEER”) submits this application to have the National Oceanic & Atmospheric Administration (“NOAA”) consider this nomination of the identified area of the marine environment for designation as a National Marine Sanctuary. As well, this nomination is consistent with, and helps fulfill, Executive Order 13547 issued July 19, 2010 entitled: “Stewardship of the Ocean, our coasts, and the Great Lakes”; and further secures the goal of the December 16, 2014 Presidential Memorandum extending the North Aleutian Basin/Bristol Bay OCS Planning Area withdrawal.

### **Section I - Basics**

- **Nomination Title**

Aleutian Islands National Marine Sanctuary (AINMS)

- **Nominator Name(s) and Affiliation(s)**

**Public Employees for Environmental Responsibility (PEER)** – a national 501(c) (3) nonprofit environmental organization (tax number 93-1102740) dedicated to assisting current and former public servants better protect the planet and headquartered in Washington, DC. This nomination is made on behalf of Alaskan members of PEER who have dedicated their careers to the protection of that state’s and the Arctic marine environment.

**Center for Biological Diversity** – a national biological diversity conservation organization, which is involved in an array of Arctic conservation issues, with an office in Anchorage AK.

**Eyak Preservation Council** – an Indigenous People’s rights and wild fisheries conservation organization, based in Cordova AK.

**The Center for Water Advocacy** – a conservation organization working on water and human rights in the northwestern U.S., with an office in Homer AK.

**North Gulf Oceanic Society** – an Alaska cetacean research and conservation organization, based in Homer AK.

**The Ocean Foundation** – an international marine conservation organization, based in Washington, D.C.

**Marine Endeavors** – a seabird conservation consulting business, based in Oakland CA.

- **Nomination Point of Contact**

The point of contact in this matter is Richard Steiner, a member of the PEER Board of Directors, a retired University of Alaska professor of marine conservation, and a marine conservation consultant who has worked periodically in the nominated region since the 1970s in marine education, conservation, research, fisheries development, shipping safety, and commercial fishing.

His contact information is as follows:

Richard Steiner  
Phone (907) 360-4503;  
Email: [richard.g.steiner@gmail.com](mailto:richard.g.steiner@gmail.com);  
Mailing Address: Box 666  
9138 Arlon St., A3, Anchorage, AK 99507

An alternate point of contact is:

Jeff Ruch  
PEER Executive Director  
Phone (202) 265-7337; Email [jruch@peer.org](mailto:jruch@peer.org);  
Mailing Address: PEER  
2000 P Street, NW Suite 240  
Washington, DC 20036

## **Section II - Introduction**

- **Narrative Description**

Alaska’s seas and coasts are unique and globally significant for their diversity, expanse, and abundance of fish and wildlife, as well as their historical, cultural, and economic

significance. Although more than half of Alaska's lands receive permanent federal protection, virtually none of Alaska's federal waters receive comparable protective status.

All federal waters along the *entire* Aleutian Islands archipelago (from 3 to 200 nautical miles north and south of the islands) to the Alaska mainland, including federal waters off the Pribilof Islands and Bristol Bay, are proposed for designation as a National Marine Sanctuary. This will incorporate extensive, highly productive fish and crab habitat; unique cold-water coral and sponge benthic communities; unique hydrothermal vent ecosystems; seamount habitats; much of the Aleutian Trench; part of the Aleutian Basin; extensive marine mammal and seabird pelagic foraging habitat; endangered North Pacific Right Whale (*Eubalaena japonica*) critical habitat; Steller sea lion critical habitat; Southwest Alaska sea otter critical habitat; crab, halibut, herring, scallop, and salmon "savings (protection) areas;" and the seven Outer Continental Shelf (OCS) Planning Areas in the region, including the North Aleutian Basin (NAB) Planning Area [map attachment 1].

This sanctuary designation would encompass an offshore area of approximately 554,000 square nautical miles (nm<sup>2</sup>), an area larger than the recently expanded Pacific Remote Islands Marine National Monument, which covers approximately 370,000 nm<sup>2</sup>. As such, the proposed Aleutian Islands National Marine Sanctuary would constitute the nation's largest marine protected area, and one of the largest in the world. It should be noted that in much of the proposed area, no new management restrictions are proposed herein, but all protections existing as of the date of nomination are to be enshrined permanently in regulation.

In further comparison with the Pacific Remote monument, the Aleutian Islands marine ecosystem is more biologically productive, has been more extensively exploited for commercial fisheries and marine mammal harvests for centuries, and is currently at greater immediate risk from overexploitation of marine resources, shipping, and offshore oil and gas development. In addition, the Aleutian Islands region has several thousand local residents who rely on the marine ecosystem.

- **Goals Description**

The Aleutian region includes some of the richest and most singular marine habitats in the world ocean. In fact, this region received one of the very first marine protective designations in U.S. history, when in 1913 President Taft reserved the Aleutians and its offshore waters, from Unimak to Attu, as a wildlife sanctuary (Executive Order 1733: "Establishing Aleutian Islands Reservation as Preserve for Native Birds, Animals, and Fish" March 3, 1913).

The Aleutian Islands Biosphere Reserve was designated by UNESCO in 1976, and the 1980 Alaska National Interest Lands Conservation Act (ANILCA) established the Alaska Maritime National Wildlife Refuge and the 1.3 million acre Aleutian Islands Wilderness, which pertains to the islands in the region.

Yet as detailed in Consideration 3 (below), Aleutian waters face rising threats on many fronts, with scant protection.

Through designation of the Aleutian Islands National Marine Sanctuary (AINMS), we propose the following management goals:

1. Protect seabird, marine mammal, and fish habitat, and restore populations and marine ecological resilience;
2. Protect and enhance Alaska Native marine subsistence;
3. Protect and enhance coastal small-boat fisheries;
4. Identify, monitor, and protect unique seabed habitats, including cold-water corals;
5. Reduce environmental risks from shipping, including oil and hazardous cargo spills, and whale-ship strikes;
6. Eliminate environmental risks from offshore oil and gas development;
7. Monitor and manage risks of marine invasive species introductions;
8. Reduce and manage marine debris;
9. Enhance marine eco-tourism development; and
10. Enhance scientific understanding of the region.

To achieve these overall management goals, we propose the following objectives:

- Permanently prohibit offshore oil, gas, and mineral leasing – All waters within the AINMS would be permanently excluded from oil, gas, and mineral leasing, including waters in the Department of Interior’s North Aleutian Basin (NAB) OCS Planning Area. In addition, the permanent prohibition on oil and gas leasing will apply to the Shumagin, St. George Basin, Aleutian Arc, Bowers Basin, St. Mathew-Hall Basin, and Aleutian Basin OCS Planning Areas. Even though the presidential withdrawal of the NAB area was extended by the December 16, 2014 Presidential Memorandum under section 12(a) of the Outer Continental Shelf Lands Act (OCSLA), the risk remains that Congress or a future administration may eliminate the withdrawal and reopen this, or other Planning Areas, to oil and gas development. The AINMS designation will specifically preclude such action, and permanently prohibit offshore petroleum exploration and development in the entire region.
- Protect Alaska Native subsistence and coastal fisheries – The AINMS will work with coastal residents of the region, particularly Alaska Natives, to protect marine subsistence activities; provide a substantial protected fishery reserve; and protect and enhance small boat, shore-based fisheries in the region.

- Protect marine mammal and seabird foraging habitat and prey species. While much of the *reproductive habitat* for seabirds and marine mammals on islands of the Aleutian region is currently protected (e.g. by the Alaska Maritime National Wildlife Refuge and National Marine Fisheries Service), most marine *foraging habitat* is not adequately protected. This has contributed to the alarming decline of many seabird and marine mammal populations throughout the Aleutian region, and an overall decline in the ecological health and integrity of the marine ecosystem. Filling this gap is a primary goal for the AINMS.
- Enshrine in regulation, and expand, habitat and species protections existing as of the date of nomination, December 22, 2014 – The eastern edge of the proposed Aleutian Islands National Marine Sanctuary (AINMS) would encompass critical habitat for the North Pacific Right Whale (the most critically endangered whale globally). In addition, the AINMS would make permanent the many laudable habitat and species conservation measures which have been implemented by the North Pacific Fishery Management Council (NPFMC) and National Marine Fisheries Service (NMFS) throughout the region, including closures of some (but not all) deepwater coral and sponge habitat in the Aleutian Islands Coral Habitat Protection Areas; Aleutian Islands Habitat Conservation Area (AIHCA); Bowers Ridge Habitat Conservation Zone; Alaska Seamount Habitat Protection Areas; Bering Sea Habitat Conservation Area; Nunivak Island, Etolin Strait, Kuskokwim Bay Habitat Conservation Area; Southwestern sea otter critical habitat; Walrus Islands federal closures; Gulf of Alaska Slope HCA; crab, halibut, herring, and salmon “savings areas;” all marine mammal conservation measures, including all Steller sea lion critical habitat; Scallop Conservation Areas; skate egg concentration Habitat Areas of Particular Concern (HAPC); Pribilof Island Habitat Conservation Area; the non-pelagic trawl closures along the south side of the Alaska Peninsula; and the Nearshore Bristol Bay Trawl Closure (map attachments 2, 3, and 4).

However, the current fishery restrictions were implemented by the NPFMC and NMFS without full consideration of the full range of ecological habitat conservation measures necessary. Many feel that the fisheries agency and fisheries council have not adequately balanced and protected non-commercial components of the marine ecosystem, such as seabirds, marine mammals, other fish species, cold-water corals, etc. As example, despite a continued decline in the sea lion population in the western Aleutians, a November 25, 2014 final rule from NMFS weakens sea lion protections in the region by opening areas previously closed to trawling for pollock, cod, and Atka mackerel. The AINMS will prohibit actions to remove or weaken existing protections, but will allow additional species and habitat protections to be established.

Thus, if after the AINMS is nominated (December 22, 2014), NMFS or NPFMC reduce or eliminate any of the existing marine habitat or species protections in the region, the AINMS will revert to the precise habitat and species protections that existed on the date of nomination - December 22, 2014. As the November 25, 2014 NMFS rule on Aleutian sea lions is scheduled to take effect December 26, 2014, and the AINMS nomination is filed December 22, 2014, this new NMFS rule will be voided by the AINMS designation. The AINMS will permanently enshrine all existing marine habitat and species protections

across the entire region in regulation, so that a future fisheries council or agency may not act to eliminate them.

On the other hand, NPFMC and NMFS would be able, and encouraged, to add to or increase any of the existing habitat and species protections in the region, as appropriate, based on the best science. Greater fishery restrictions in the region are clearly necessary to protect and rebuild important components of the marine ecosystem – fish, shellfish, seabirds, and marine mammals.

It is proposed that, west of 170 W and south of 55 N, the AINMS will extend the existing non-pelagic (bottom) trawl closure (the Aleutian Islands Habitat Conservation Area) to include all federal waters out to 200 nautical miles offshore, thus eliminating the current areas open to bottom trawling in federal waters west of 170 W. As well, the AINMS will expand the AIHCA trawl closure west of 170 W and south of 55 N, to apply to all trawls, including pelagic trawls, out to 20 miles offshore. The area from 20 – 200 miles offshore in the existing AIHCA will remain as is – all non-pelagic (bottom) trawls will continue to be prohibited, and pelagic trawls permitted.

The AINMS will also expand, as appropriate and as the science suggests, other fishery and habitat restrictions in the region. These will include additional critical seabed habitat protection closures in areas identified by additional benthic habitat surveys. As well, areas that should be considered for additional protections - in consultation with local Tribal governments, NMFS, and NPFMC - include the Seguam Pass and Bogoslof foraging areas for Steller sea lions; the Pribilof Island HCA; and the Nunivak, Etolin Strait, Kuskokwim Bay HCA. The AINMS will monitor the recovery of benthic habitat damaged by bottom trawls, and explore the potential for aiding its restoration.

As a significant portion of the commercial fishery catch from the Bering Sea/Aleutian Islands (BSAI) management region comes from Bering Sea sector, outside of waters proposed for inclusion in the AINMS, the AINMS will serve as a fishery reserve for rebuilding lucrative Bering Sea fisheries (e.g., crab, pollock, halibut, salmon, cod), protecting and rebuilding seabird and marine mammal populations, reducing by-catch of important "prohibited" species (crab, halibut, salmon), reducing marine debris from bottom hang-ups of bottom trawls, and protecting and enhancing small boat coastal fisheries in the region.

- Regulate transit merchant shipping – Require all transit ships (e.g. those not calling at Aleutian ports) to route outside of 50 miles offshore, except when transiting North or South between the Bering Sea and North Pacific, through the Aleutian passes such as Unimak Pass, Amchitka Pass, and at Buldir Island. This will affect some 4,000 – 8,000 merchant ships/year (many on “Innocent Passage”) transiting the region between North America and Asia ports. This routing restriction will reduce risks of groundings, heavy fuel oil spills, spills of hazardous cargo (e.g. chemicals, crude oil, petroleum products, etc.), invasive species introductions, and will reduce underwater noise generated from shipping into nearshore waters.

This ship routing restriction, along with others measures to reduce the risk of oil spills or whale-ship strikes, will require designation of the region by the International Maritime Organization (IMO) as a Particularly Sensitive Sea Area (PSSA), as proposed in 2009, and currently in consideration in the Aleutian Islands Risk Assessment process. To date, the only two PSSAs in US waters are the Florida Keys and Papahānaumokuākea Marine National Monument (Northwestern Hawaiian Islands). Until PSSA designation is secured for the Aleutian Islands region, all transit ships should be requested to voluntarily avoid waters within 50 miles of shore within the AINMS, and adopt other safety precautions. For Unimak Pass, a Vessel Traffic Service (VTS) and standby rescue tug should be required.

- Reduce risks from transit ship traffic in offshore waters (50-200 miles) of the AINMS – AINMS designation will facilitate development of the PSSA designation, including the 0-to-50 mile Area-To-Be Avoided (ATBA), other traffic routing agreements, vessel traffic systems, reporting agreements, real-time vessel tracking requirements, rescue/escort tug requirements, emergency tow packages, and more robust in-region oil spill response capacity. Additionally, measures to reduce the risk of whale-ship strikes will be identified and implemented as appropriate, including ship speed limits, marine mammal bow lookouts, night vision systems, active sonar, enhanced automated whale detection systems, acoustic “pingers” on ship bows, and so on.

This nomination is consistent with, and helps fulfill, Executive Order 13547 issued July 19, 2010 entitled: “Stewardship of the Ocean, our coasts, and the Great Lakes.” As well, it further strengthens the goal of the December 16, 2014 Presidential Memorandum extending the NAB/Bristol Bay leasing withdrawal.

- **Location Description**

The Aleutian Islands National Marine Sanctuary (AINMS) is proposed to include all federal waters (from 3 to 200 miles offshore) north and south of the Aleutian Islands, extending from the US-Russia Maritime Boundary in the west (170 E.), east to 157 W. (a total of 33 degrees Longitude).

The northern boundary of the AINMS will extend from the US-Russia boundary along the offshore EEZ boundary, to the southeast corner of the Bering Sea “donut hole,” then in a direct line north of the Pribilof Islands to Nunivak Island, then due east to the 3-mile boundary of Alaska state waters.

The southern boundary will extend from the US-Russia boundary along the offshore EEZ boundary to 157 W.

The AINMS will encompass and make permanent all habitat and species protections in the region that existed on December 22, 2014, including the entire existing Aleutian Islands Habitat Conservation Area (AIHCA); the southern edge of the Bering Sea Habitat Conservation Area (BSHCA); the Bowers Ridge Habitat Conservation Zone; the Aleutian Islands Coral Habitat Protection Areas; the Alaska Seamount Habitat Protection Area; all Steller sea lion critical

habitat; Southwest Alaska sea otter critical habitat; the Pribilof Island Habitat Conservation Area; Nunivak Island, Etolin Strait, Kuskokwim Bay Habitat Conservation Area; Pribilof Island Habitat Conservation Area; skate egg concentration Habitat Areas of Particular Concern; and other habitat and species protections (crab, halibut, salmon, herring, scallop protection areas) established by the North Pacific Fishery Management Council (NPFMC), the National Marine Fisheries Service (NMFS), and US Fish & Wildlife Service (USFWS); and will include the entire Department of Interior (DOI) North Aleutian Basin (NAB) Outer Continental Shelf (OCS) Planning Area (map attachments 2, 3, 4).

The AINMS would protect a total maritime area of approximately 554,000 square nautical miles.

### **Section III – Criteria Information**

#### **Criteria 1 Ecological Significance**

The area's natural resources and ecological qualities are of global significance, and contribute significantly to biological productivity and diversity, maintenance of ecosystem structure and function, maintenance of ecologically and commercially important species and species assemblages, maintenance of critical habitat, representative biogeographic assemblages, and maintenance/enhancement of connectivity to other ecologically significant resources.

The Aleutian Islands marine ecosystem is one of the most biologically productive in the world ocean, supporting the largest populations of marine mammals, seabirds, fish, and shellfish in the nation, and one of the largest anywhere in the world. The marine ecosystem has supported the subsistence needs of coastal Alaska Native people for millennia, has experienced excessive marine mammal harvests by commercial marine mammal hunters and whaling fleets, and more recently has experienced excessive commercial fishery harvests and oil spills from transit shipping.

Of the 450 or so fish species in the region, some 25 are commercially exploited, including pollock, cod, flatfish, sablefish, rockfish, Atka mackerel, halibut, salmon, and herring. Shellfish harvested in the region include king crab, tanner crab, and shrimp.

The Aleutian region is one of the most important seabird habitats in the world, supporting tens of millions of seabirds each summer, including shearwaters, fulmars, petrels, kittiwakes, murrelets, auklets, albatross, and puffins. The whiskered auklet is endemic to the Aleutians. And the Aleutians serves as a significant spring and fall staging area for migratory waterfowl, including black brant, Taverner's Canada geese, emperor geese, and Steller's eiders. The recovery of Aleutian Canada geese is one of the most encouraging bird recovery stories in the world. Once feared extinct, a small remnant population was discovered on Buldir Island in the western Aleutians in the 1960s, from which the USFWS conducted a successful recovery program throughout the Aleutians.

As well, the Aleutian region is one of the most important marine mammal habitats in the world ocean, supporting over 20 species of marine mammals, including sea otter, fur seal, walrus, harbor seal, Steller sea lion, porpoise, killer whale, beluga whale, sperm whale, beaked whales,

North Pacific Right whale (the world's most endangered whale), Humpback whale, Sei whale, Blue whale, Minke whale, Fin whale, and Gray whale. Some of these are year-round residents (sea lions, seals, sea otters), and others are summer migrants (whales, etc.). Many of these are listed as threatened or endangered under the ESA. The western Aleutians region was the only habitat for one of the only marine mammal species to become extinct – the Steller’s sea cow.

From Aleutian Subarea Contingency Plan, US DOI. Threatened & Endangered species in Aleutian region

<b>Table 1: Endangered Species Act of 1973 Protected species and critical habitat</b>			
<b>Listed species</b>	<b>Stock</b>	<b>Latin Name</b>	<b>Status</b>
Short-tailed albatross		<i>Phoebastria albatrus</i>	Endangered
Steller’s eider	Alaska breeding	<i>Polysticta stelleri</i>	Threatened
Spectacled eider		<i>Somateria fischeri</i>	Threatened
Blue whale		<i>Balaenoptera musculus</i>	Endangered
Humpback whale		<i>Megaptera novaeangliae</i>	Endangered
Fin whale		<i>Balaenoptera physalus</i>	Endangered
Sei whale		<i>Balaena borealis</i>	Endangered
Sperm whale		<i>Physeter macrocephalus</i>	Endangered
Northern right whale		<i>Eubalaena glacialis</i>	Endangered
Northern sea otter	Southwest	<i>Enhydra lutris kenyoni</i>	Threatened
Steller sea lion	West of 140 degrees N	<i>Eumetopius jubatus</i>	Endangered
<b>Designated Critical Habitat</b>			
<b>Species Group</b>	<b>General Reference Area</b>		
Whales	Northern right whale in Bering Sea waters north of False Pass		
Birds	Spectacled eider critical habitat has been designated at Nelson and Izembek lagoons		
Sea otters	Aleutian Islands		
Sea lions	20 miles seaward around each major haulout		

Benthic habitats along the Aleutians also harbor the highest diversity and abundance of cold-water corals (some that can live up to 200 years) in the world, in addition to sponge habitat and unique hydrothermal vent ecosystems. Scientists have identified 101 cold water coral species in the region (about half of which are endemic to the Aleutians), and 136 sponge species, many of them new to science.

Regarding ecological connectivity, Unimak Pass, for example, is recognized as one of the most important migratory bird and marine mammal corridors in the world ocean, and can be fairly considered a “marine ecological gateway.” Much of the migration of whales, seals, seabirds, and fish (e.g. Bristol Bay red salmon) pass seasonally through this Aleutian pass. Aleutian Island passes are also a vital areas for zooplankton (euphausiids and copepods), squid, and forage fish, particularly young-of-the-year pollock and lanternfishes, and thus are critically important feeding areas for seabirds and marine mammals from throughout the North Pacific. The passes area also transition zones between the polar seas of the Bering and the Arctic and the temperate waters of the mid-latitude, northern Pacific Ocean.

**Criteria 2 Historic Resources**

The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance in that individually and collectively it contains many resources that are consistent with the criteria of eligibility for listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the Indigenous People of the region and nation. Uncontrolled access to archeological or paleontological sites can be damaging. Many of these resources are in areas protected only by their remoteness, and severe weather conditions.

Coastal sites in the Aleutians currently listed as National Historic Landmarks include:

<u>Name</u>	<u>Location</u>
Adak Army Base and Naval Operating Base	Adak
Anangula Archeological District	Nikolski vicinity
Attu Battlefield and U.S. Army and Navy Airfields	Attu
Cape Field at Fort Glenn	Umnak Island
Chaluka Site	Umnak Island
Dutch Harbor Naval Operating Base and Ft. Mears	Amaknak Island
Holy Ascension Orthodox Church	Unalaska
Japanese Occupation Site	Kiska
Seal Islands Historic District	Pribilof Islands

Notably, the Aleutian region is the only place in the U.S. that has been invaded and occupied by a foreign military (Japan, WWII). In addition, the Aleutians were the site of the Amchitka nuclear tests in 1965, 1969, and 1971 - the largest underground nuclear test in US history.

Moreover, there are more than 180 known shipwrecks and groundings in or adjacent to Aleutian waters. [See Attachment 5, with known wrecks organized by island].

Finally, it is highly likely that many yet to be identified marine archaeological and historic sites exist in the Aleutians. The AINMS will seek to identify such sites.

**Criteria 3 Economic Value**

The Aleutian Islands are home to the largest fishing port in the U.S. Each year nearly a billion pounds of fish and shellfish are landed at Dutch Harbor. Altogether, the sustainable fishery resources in the area are worth over \$2 billion dollars annually:

Gross Commercial Fishery Values for State and Federal Waters of the Bering Sea and Aleutian Islands Management Area, 2010
Salmon \$449.8 million
Halibut \$43.3 million
Herring \$26.6 million
Crab \$236.4 million
Other \$1.4 million

Groundfish \$1,580 million
TOTAL \$2.34 billion

Source: Terry Hiatt et al. December 2011. Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area: Economic Status of the Groundfish Fisheries Off Alaska, 2010. Alaska Fishery Science Center.

A substantial portion of this fishery harvest derives from waters proposed for inclusion in the AINMS. In particular, of critical importance to the coastal economy of the proposed region is the Bristol Bay red (sockeye) salmon fishery, which is the largest sockeye run in the world.

In addition to commercial fishing, subsistence fishing is extremely significant to local residents. All five species of Pacific salmon use waters of the Aleutian Islands. The species and number of salmon harvested for subsistence varies greatly among communities. Other than salmon, subsistence fisheries in the area include crab and halibut.

While marine tourism is not yet a major industry in the region, it is steadily growing, and has significant growth potential. The number of charter boats and hotels is on the rise, as are flights into Unalaska / Dutch Harbor, as well as other areas.

**Criteria 4 Public Benefits**

The publically derived benefits of the area proposed for inclusion in the AINMS include commercial value, seafood production, aesthetic and intrinsic value, public recreation, and tourism, and all depend on conservation, recovery, and sustainable management of the area's unique and productive marine resources.

As discussed above, the Aleutian Islands region is a critical component supporting the world's largest groundfish fisheries, as well as the world's largest red salmon fishery. In addition, the region hosts the most abundant marine mammal, seabird, shellfish, and fish populations in the world ocean. It is truly one of the last great maritime wilderness areas in US waters. Conserving such marine ecological resources is of paramount importance to our national ocean policy.

Even if the general public finds it difficult and expensive to visit this region, conserving the ecological resources is important to all Americans. If a non-use, contingent valuation economic study were to be conducted for the Aleutian region, we are confident it would estimate the intrinsic value of protecting the region in the range of billions of dollars per year.

**Section IV – Consideration Information**

**Consideration 1. Opportunities for research in marine science.**

The AINMS will expand marine biological research in the Aleutian region, and the region will be nominated for designation as a marine Long-Term Ecological Research (LTER) Site within the National Science Foundation network. There are currently no marine LTERs in subarctic or arctic waters of the U.S. A focus of the LTER will be marine ecological resilience and recovery from excessive fishery harvests and impacts.

While the Aleutian Islands are a biologically diverse and productive marine ecosystem, little is known about its internal dynamics. Marine population declines and extinctions have occurred in the region. Several species of seabirds and marine mammals residing in or utilizing the Aleutian Islands are listed under the Endangered Species Act. In addition, severe economic losses have resulted from the collapse of economically valuable species, such as red king crab.

Conferring NMS status would allow researchers the opportunities to better understand a myriad of still largely unmet information needs, such as –

- The effects of climate change, including acidification, in cold water marine ecosystems;
- Species abundance trends;
- Contours and dynamics of the foraging, spawning, and nursery habitats of marine species;
- The recovery of seabed habitat damaged by bottom trawling, and the potential to aid in its restoration;
- The role of deep passes in limiting the distribution of species;
- Linkages between fish and invertebrate populations in the Aleutian Islands to the open ocean ecosystem and to the Bering Sea and Gulf of Alaska;
- The relationship between deep ocean ecosystems of the Western Aleutian Islands and shallower Bering Sea;
- Whether the Aleutian Islands are a wholly separate ecosystem;
- The distribution of unique habitat features such as cold-water corals and sponges, as well as kelp and other macroalgae; and
- The functional roles of commercial species in marine food webs.
- Marine ecological resilience and recovery from overexploitation (trophic cascade hypotheses, etc.)

Besides these and other biological research opportunities, as noted above, the Aleutians contain many yet to be identified marine archaeological and historic sites. Cataloging and documenting these sites is a vast undertaking which would further marine archaeological research.

### **Consideration 2. Opportunities for education, understanding, and appreciation of the marine environment.**

The region proposed for inclusion in the AINMS offers world-class opportunities for public education, understanding, and appreciation of productive, sub-arctic marine ecosystems. While the region is remote, has notoriously inclement weather, and is very difficult to access, the unique region can, and should, be presented more effectively to the public via media, such as television, and print media. The AINMS will expand such public educational outreach efforts.

In addition, marine ecotourism can, and should, be enhanced and expanded in the Aleutian region. This will be a goal for the AINMS.

### **Consideration 3. Adverse impacts and threats from current or future uses.**

The area of the proposed AINMS is at risk from four main threats: overfishing, oil and gas development, invasive species, and increasing shipping. These threats are, in turn, aggravated by the growing effects of climate change.

A. Pattern of Excessive Harvest Drives Species and Habitat Decline. Most of Alaska's threatened and endangered species are marine animals, and many seabird and marine mammal populations throughout Aleutians are in decline – the result, many scientists suspect, of excessive harvests of certain fish populations in combination with long-term changes in the ocean environment. While some laudable habitat and species conservation restrictions have been implemented by NMFS/NPFMC (as discussed above), some populations continue to decline, and many are not recovering sufficiently. It is clear that existing restrictions are not sufficient to restore the ecological integrity of the region.

B. Risks from Offshore Oil Development. The Alaska Outer Continental Shelf (OCS) is one of the last remaining large offshore hydrocarbon prospects in the nation, and is the target of both current and future leasing plans. The federal government estimates that the Alaska OCS may contain between 50 billion and 100 billion barrels of oil equivalent (oil & gas).

The Department of Interior's North Aleutian Basin (NAB) Planning Area covers the majority of the eastern edge of the proposed AINMS area, including Bristol Bay. But as many local communities and commercial fishermen strongly oppose offshore oil and gas leasing in this region, the NAB area was removed from the proposed leasing schedule in March 2010 by presidential withdrawal under section 12(a) of the Outer Continental Shelf Lands Act (OCSLA). And even though the OCSLA withdrawal was extended by the December 16, 2014 Presidential Memorandum, the risk remains that Congress or a future administration could eliminate the OCSLA withdrawal and reopen the area to oil and gas development. The AINMS designation would specifically preclude such.

In addition, other OCS Planning Areas in the proposed AINMS boundaries include the Shumagin, St. George Basin, Aleutian Arc, Bowers Basin, St. Mathew-Hall Basin, and Aleutian Basin Planning Areas. The AINMS designation would permanently prohibit opening of these Planning Areas as well.

There are significant concerns among many local people, and people across the U.S., regarding offshore development of oil and gas in the region through which the largest red salmon run in the world migrates. Each summer, juvenile Bristol Bay salmon migrate outbound, and adult salmon migrate inbound, directly through the NAB region. Beyond the normal operational impacts of potential offshore drilling and production in the NAB region (waste discharge, noise, habitat disturbance, etc.), there is a very real concern regarding the risk of a major oil spill. Regardless of how safely government and industry intend to develop offshore petroleum resources, the risk of a catastrophic oil spill cannot be eliminated. Many see this as an unacceptable risk to impose in such a biologically productive marine ecosystem.

Fishermen and local communities are keenly aware of the Deepwater Horizon disaster in the Gulf of Mexico, and are worried that such a blowout in the NAB area would devastate the Bristol Bay salmon fishery and other coastal resources. Fishermen are also aware that the ecological injury from the 1989 Exxon Valdez Oil Spill in Alaska's Prince William Sound persists today, over 25 years later. One fish population in the oil spill region - Pacific herring - is still listed today by government agencies as "Not Recovering."

C. Invasive Species. Another risk from oil and gas development and shipping is the introduction of invasive marine species. One international expert, Dr. Gregory Ruiz based at the Smithsonian Environmental Research Center, warned of vulnerabilities in current approaches in an email exchange with federal and state officials in March 2006. Dr. Ruiz cited "many gaps" in anti-invasive safeguards, including:

- **Vague Standards.** Hull cleaning standards are "largely undefined... the frequency of cleaning or magnitude of fouling is not explicit. Unlike ballast water, there are few contemporary studies of hull fouling on commercial vessels to define the effect of time, hull husbandry, and vessel type on biofouling – so there is a clear lack of information that would be useful in setting quantitative guidelines or regulations in this area";
- **Rig Loopholes.** "Of great concern to me is the transport of drilling platforms/rigs. When a rig is moved from a prior deployment, it is likely heavily fouled – much more so than commercial vessels, which are in motion (having limited residence time for colonization) and move quickly (sheering off organisms)"; and
- **Ballast Water.** "Coastwise, or domestic-source, traffic arriving to Alaska are not required to treat ballast – and hence the door is wide open for non-native species transfers from such 'invasion hotspots' as San Francisco Bay and Long Beach, source ports for many tankers." While dedicated tanker traffic to Prince William Sound does manage ballast water, other transit ships through the Aleutians do not effectively manage the potential for invasive species introductions. Some ships likely conduct open ocean exchange of ballast water in the region.

One analyst from the U.S. Department of Interior, Jeffrey Childs, proposed to integrate invasive species concerns into environmental assessments and mitigations for permitting activities, warning that "The introduction of non-native species to Alaska waters that subsequently become invasive may very well yield much greater significant adverse impacts than a large oil spill."

Indeed, in its 2009 comments to the Obama administration's Outer Continental Shelf Oil and Gas Strategy, NOAA recommended buffer zones that would bar drilling "around... Habitat Areas of Particular Concern, Critical Habitat for endangered and threatened species, [and] major fishing grounds," due in part to invasive species risk.

D. Ship Traffic on the Rise. The Arctic has witnessed a much faster than anticipated decline of sea ice and this trend will transform the Arctic Ocean into a navigable seaway over the coming decades. Commercial shipping companies are plotting new shipping lanes across the "opening"

Arctic. Besides freight vessels (e.g. bulk freighters, container ships, car carriers), we expect increased ship traffic along the Aleutians from oil and chemical tankers, and cruise ships.

This increased traffic produces more underwater noise that is known to cause impacts to marine populations. Negative impacts of underwater noise have been reported for more than 50 marine species in scientific studies to date. These adverse effects include disruption of normal behavior patterns, such as feeding; temporary loss of hearing or inability of marine mammals to communicate; and disorientation leading to stranding events. While the long-term or cumulative effects of heightened underwater sound levels remain unclear, there is growing concern that living in a noisy environment may push already highly stressed marine animals into population decline, with subsequent effects on marine communities and biodiversity.

Increased ship traffic also increases the risks of whale-ship strikes. Globally, fatal collisions with ships have become a significant threat to whale survival. Ship strikes are on the rise, due to a combination of increasing coastal ship traffic, smaller crew size, larger vessels, and faster speeds. As ships grow larger, the propeller/engine noise is localized far aft (e.g. 300 meters) of the bow of the ship, rendering the relatively silent approaching bow an even greater collision risk to marine mammals.

As well, there is insufficient protection from ship collisions, groundings, and fuel oil and hazardous cargo spills. As the Aleutians have some of the most severe maritime weather in the world, and ship traffic between Asia and North America is increasing in the region, this increases the risk of ship casualties. The passes in Aleutian waters have limited vessel tracking, no established traffic lanes, no vessel traffic system, no speed limits, no mandatory pilotage, no weather restrictions, inadequate or no rescue tug capability, and limited spill response capability. There is immediate risk of oil and other hazardous cargo spills each day in the Aleutians, with potentially catastrophic consequences.

For example, due to the water currents from Unimak Pass into the Bering Sea, a spill at Unimak Pass could spread widely across the southeastern Bering Sea ecosystem. The December 2004 grounding of the Malaysian bulk freighter *Selendang Ayu* on Unalaska Island gives a hint of the destructive potential. The ship lost engine power in a winter storm and grounded, costing the lives of six crewmembers, spilling over 300,000 gallons of heavy fuel into nearshore waters, and killing thousands of seabirds. Had the ship lost power and grounded at Unimak Pass during spring or fall, or had this been a chemical or oil tanker, the ecological injury could have been far worse.

E. Climate Change Multiplies Adverse Impacts. Climate change is reducing sea-ice cover and leading to unprecedented marine ecosystem impacts in Alaska, including ocean acidification, warming sea temperatures, altered distribution, and coastal erosion.

Changes in climate and the oceans are causing changes in marine migrations, which threaten to exacerbate the effects of excess fish harvests. Retreating sea ice and warming temperatures enable more Arctic oil and gas activity and increases in ship traffic. The waters of the Bering Sea/Aleutian Islands are more acidic than any other marine waters in the world, due to CO<sub>2</sub>

absorption. Many in the marine science and fishing community are justifiably worried about acidification.

Summing up the thrust and seriousness of the threats to this ecoregion, the words of the National Research Council its 1996 report on the Bering Sea Ecosystem were prophetic:

“It is extremely unlikely that the productivity of the Bering Sea ecosystem can sustain current rates of human exploitation as well as large populations of all marine mammals and bird species that existed before known exploitation – especially recent exploitation – began.”

Arguably, no place in the American marine environment is more productive, or more at risk, than this area nominated for National Marine Sanctuary protection.

**Consideration 4. Unique conservation and management value for this area or adjacent areas.**

Alaska's approximately 218 *Marine Protected Areas* (MPAs) – including various fishery-management closures, buffers around sea lion rookeries, research reserves, state marine parks, critical habitat areas, game sanctuaries and recreation areas – offer few meaningful safeguards against these rising threats. The existing MPAs are mostly limited to inshore waters, provide minimal protections, and are often temporary. Recent attempts to secure permanent federal protections in Alaskan waters have been unsuccessful.

Conserving the region as proposed will relocate some fishing effort, and thus provide a fishery reserve to rebuild harvested fish and shellfish populations in adjacent areas. It will also protect critical feeding and reproductive habitat for many seabirds and whales that migrate to the Aleutians each summer from more southerly waters of the western, central, and eastern North Pacific.

The Aleutian Islands NMS will protect feeding habitat for many seabirds (e.g. albatross) that nest on the Papahānaumokuākea Marine National Monument (Northwestern Hawaiian Islands). Additionally, the AINMS will protect feeding habitat for whales that winter in US waters further south. For instance, protecting Unimak Pass from shipping and oil spill risks will directly protect the population of Gray whales that migrates along the Pacific coast of the U.S., through other National Marine Sanctuaries. The AINMS will also protect feeding habitat for some of the Humpback whales that winter in the Hawaiian Islands Humpback Whale National Marine Sanctuary.

In addition, the AINMS will work with the State of Alaska to develop corollary protections in state waters (0-3 mile) throughout the region, where appropriate.

**Consideration 5. Supplements existing regulatory and management authorities.**

Even though the December 16, 2014 Presidential Memorandum extends the NAB OCS withdrawal indefinitely, the risk remains that Congress of a future administration may reopen the

region to offshore drilling. Thus, the entire NAB OCS Planning Area and North Pacific Right Whale critical habitat area would be included in the AINMS, to *permanently* exclude oil and gas leasing, and to impose more stringent shipping safety protocols (e.g. measures to reduce whale-ship strikes and oil spill risks). The AINMS would facilitate designation of other critical habitat in the region, as appropriate. And, as discussed above, the Aleutian Islands NMS would be nominated by the federal administration as a PSSA in the IMO process, to better manage transit shipping through the region.

As discussed, the AINMS will complement the existing fishery management regime of the NPFMC and NMFS, by enshrining the existing habitat and species protections in regulation, and encouraging additional fishery management measures that will augment species and habitat protections in the region.

In addition, the AINMS will complement the Alaska Maritime National Wildlife Refuge (AMNWR) management of seabirds nesting on the Aleutian Islands, by protecting foraging habitat, reducing invasive species, and reducing marine debris.

#### **Consideration 6. Potential commitments or partnerships to aid conservation.**

Alaska Native Tribal governments in the region will be important co-management partners, as will the Alaska native marine mammals co-management commissions.

The Alaska Maritime National Wildlife Refuge (AMNWR) of the U.S. Fish and Wildlife Service is responsible for managing much of the land area contained within the proposed AINMS, and will be an important partner in AINMS management. While the management goals for the AMNWR call for protection of foraging habitat for seabirds which nest on the Aleutian Islands, the USFWS has little authority to actually do so. The AINMS will provide such capability.

The NMFS Alaska Regional Office and the NPFMC will also be important partners. These fisheries management organizations will be encouraged to work with the AINMS to implement more effective fishery management protocols in the region in order to enhance marine ecosystem recovery and sustainability.

The State of Alaska and local governments will also be important governmental partners in the development and operation of the AINMS.

#### **Consideration 7. Community-based support for the nomination.**

The nomination will facilitate a wide-ranging discussion among community organizations, governments (including Tribal governments), industry, and the public regarding the proposed designation of the region. The several Alaska-based and national marine conservation and science organizations joining as co-nominators indicate broad initial support.

Several other local and regional organizations are still formulating positions on this nomination. We believe that its publication on the NOAA National Marine Sanctuaries website will greatly enhance public review and comment on the nomination.

We are confident that the AINMS nomination will attract support from the national and Alaska marine conservation community, the national and Alaska environmental community in general, shore-based commercial fishing organizations, and hopefully the Alaska Native tribal organizations in the region. Importantly, we are confident the nomination will attract significant support of the American public – the co-owners and co-managers of the federal waters and resources of the region.

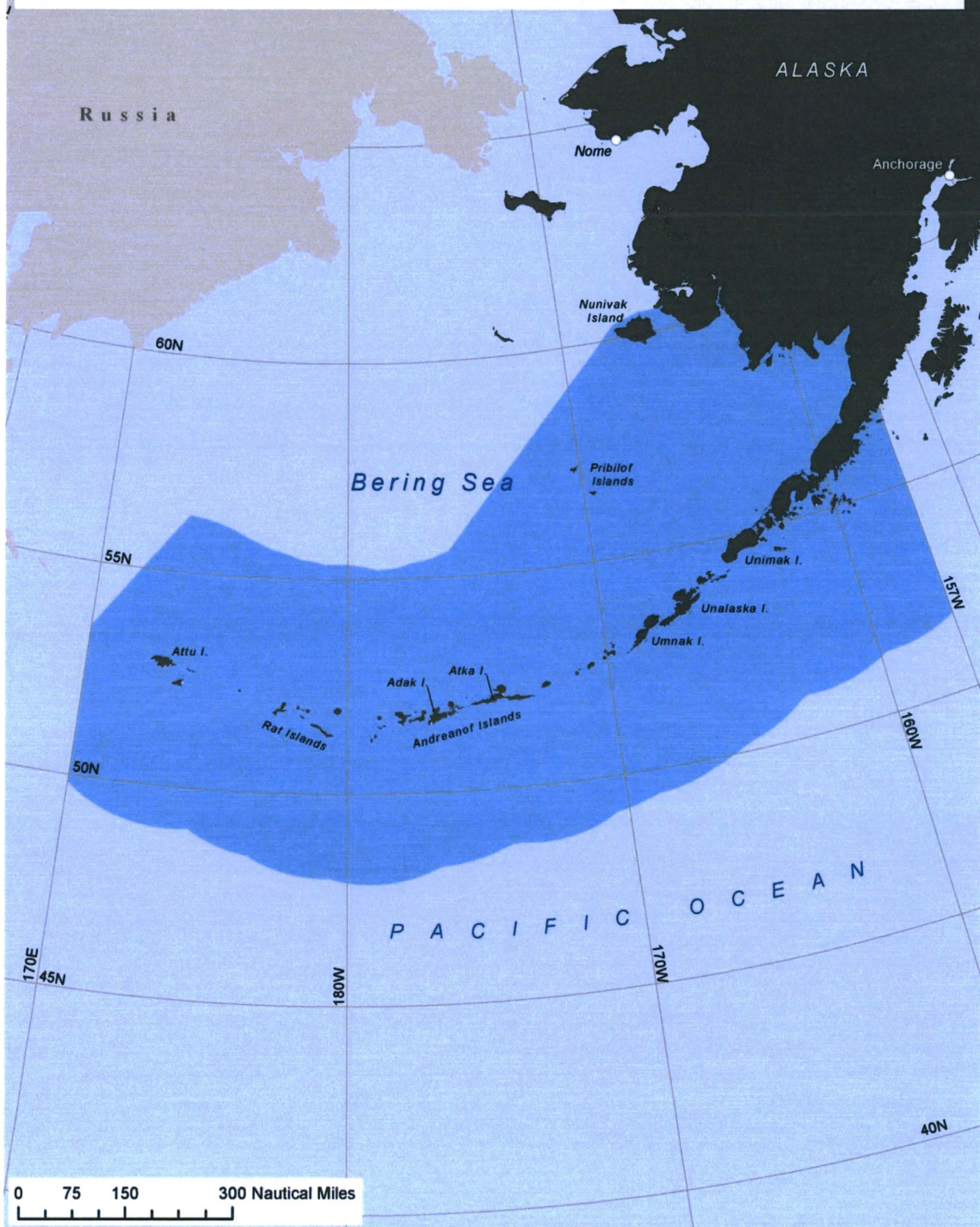
It is also expected that any proposed federal restrictions in Alaska will attract opposition. As example, the 1980 Alaska National Interest Lands Conservation Act (ANILCA) attracted a great deal of political opposition in Alaska, but today is viewed by many as an important federal management decision that has significantly aided Alaska's economy. We expect the AINMS designation to experience a similar political evolution. For example, we are aware that some business interests in the region oppose making permanent the NAB/Bristol Bay OCS withdrawal and the species and habitat protections, as well as the proposed expansion of trawl closures.

As stakeholders review and consider the nomination, it is likely that additional conservation management measures will be suggested, and we urge that all such suggestions be seriously considered in final designation. In order to capture this additional stakeholder input, the nominators will file supplemental support material later this spring summarizing the results of the outreach generated by the nomination process.

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Cc. William Douros  
West Coast Regional Director  
NOAA Office of National Marine Sanctuaries,  
99 Pacific Street  
Suite 100F  
Monterey, CA 93940  
[william.douros@noaa.gov](mailto:william.douros@noaa.gov)

# Aleutian Islands National Marine Sanctuary Proposed Boundaries





# CITY OF ADAK, ALASKA

## RESOLUTION 15-2015-001

### **A RESOLUTION OF THE CITY OF ADAK, ALASKA OPPOSING THE NOMINATION OF THE ALEUTIAN ISLANDS NATIONAL MARINE SANCTUARY**

**WHEREAS**, the National Oceanic and Atmospheric Administration (NOAA) opened a process to nominate potential national marine sanctuaries; and,

**WHEREAS**, a collection of outside non-governmental organizations (NGOs) including Public Employees for Environmental Responsibility (PEER), have nominated an immense area to be designated as 'Aleutian Islands National Marine Sanctuary' (AINMS); and

**WHEREAS**, no city, borough, tribe, native corporation, or other local or regional group was involved in the preparation of the AINMS nomination; and

**WHEREAS**, the NOAA National Marine Sanctuary nomination process clearly states that 'Every Nomination Starts at the Community Level'; and

**WHEREAS**, as yet, no city, borough, tribe, native corporation, or other local group has come out in support of the AINMS nomination; and

**WHEREAS**, the potential designation of the AINMS would make all current restrictions to fishing and other commerce permanent, and would authorize further onerous permanent restrictions; and,

**WHEREAS**, the fishing industry and the economic activity related therein generate more than 85% of the revenues of the current municipal budget; and,

**WHEREAS**, fishing in the AINMS proposal is at present regulated, managed and enforced by the North Pacific Fishery Management Council (NPFMC), Alaska Department of Fish & Game (ADF&G) and the United States Coast Guard; and,

**WHEREAS**, the Aleutian Island Risk Assessment project, of which Adak participated in, recently recommended The Optimal Response System addressing risks associated with increasing shipping; and,

**WHEREAS**, the Aleutian Islands is subject to a Fishery Ecosystem Plan of the NPFMC, which provides enhanced scientific information and measurable indicators to evaluate and promote ecosystem health, sustainable fisheries, and vibrant communities in the Aleutian Islands region; and,

**WHEREAS**, a significant portion of the Aleutian Islands, approximately 277,100 nm<sup>2</sup> is currently designated as a habitat conservation area, and further protections are not necessitated; and,

**WHEREAS**, the AINMS proposal is an unwarranted, unnecessary and overbearing regulatory system for our region and the submission of the proposal by those who propose to designate this substantial area as a 'sanctuary', wrongly assume that generations of residents of this region have not been good stewards of these resources.

#### **CITY OF ADAK, ALASKA**

100 Mechanical Street, Suite B122 • Adak, Alaska 99546

Post Office Box 2011 • Adak, Alaska 99546 • Tel: 907.592.4500 • Fax: 907.592.4262


[www.adak-ak.us](http://www.adak-ak.us)

**NOW THEREFORE BE IT RESOLVED** that the City of Adak, Alaska vehemently **OPPOSES** the nomination of the proposed Aleutian Islands National Marine Sanctuary; and,

**BE IT FURTHER RESOLVED** that this resolution will be delivered to Governor Bill Walker, Senator Lisa Murkowski, Senator Dan Sullivan, Representative Don Young, the State of Alaska Legislature and the NOAA Office of National Marine Sanctuaries.

**PASSED AND APPROVED** by a duly constituted quorum of the City Council this 21<sup>st</sup> day of January, 2015.

ATTEST:

  
Thomas Spitzer, Mayor

  
Debra Sharrah, City Clerk





## RESOLUTION 15- 01

### **A RESOLUTION OF THE AGDAAGUX TRIBE OF KING COVE OPPOSING THE NOMINATION OF THE ALEUTIAN ISLAND NATIONAL MARINE SANCTUARY**

**WHEREAS**, the Agdaagux Tribe of King Cove is a federally recognized tribe in Alaska; and

**WHEREAS**, the National Oceanic and Atmospheric Administration (NOAA) has opened a process to nominate potential national marine sanctuaries; and

**WHEREAS**, a collection of outside non-governmental organizations (NGOs) have nominated an area greater than the size of the State of Alaska to be potentially designated as 'Aleutian Islands National Marine Sanctuary' (AINMS); and

**WHEREAS**, the NOAA National Marine Sanctuary nomination process clearly states that 'Every Nomination Starts at the Community Level'; and

**WHEREAS**, there is no local support from our local tribe for this nomination; and

**WHEREAS**, the potential designation of the AINMS would negatively impact the Agdaagux Tribe of King Cove and the surrounding communities; and

**WHEREAS**, the potential designation of the AINMS would make all current restrictions to fishing and other commerce permanent, and would authorize further permanent restrictions; and

**WHEREAS**, the concerns identified in the proposal – overfishing, oil/gas development, invasive species and increased shipping – are already addressed:

- Fishing stocks are at record levels in this region due to good stewardship by local residents and management by the Board of Fisheries and the North Pacific Fishery Management Council.
- Offshore oil/gas development has not occurred in this area for decades and is not feasible nor planned in the near future.
- Current EPA regulations already address potential invasive species issues.
- The Aleutian Island Risk Assessment project Optimal Response System will address increasing shipping risks; and,

**WHEREAS**, the local people who have been good stewards of this region for generations object to the audacity of those who propose to designate this vast area, our home, as a 'sanctuary', and,

**WHEREAS**, as part of our ongoing stewardship, the Agdaagux Tribe of King Cove has recently started a program "Local Monitoring of Ecologically Important Species in Three Aleutian Island Communities," in which the Agdaagux Tribe collects marine mammal and waterfowl data ( including but not limited to : Stellar Sea Lions, Killer Whales, Northern Sea Otter's, Emperor Geese, Pacific Black Brant, and Stellar's Eiders) from local sentinels throughout the Aleutian Region, as well as data from our volunteer Aleutian Citizen Sentinels who are fishermen from throughout the region, and

**WHEREAS**, the Aleut people, including the tribal members of the Agdaagux Tribe, are greatly reliant on these waters for survival and have been for thousands of years, and

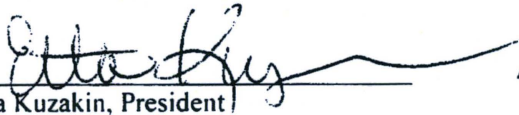
**WHEREAS**, the Aleut people take pride in being ecologically and environmentally responsible with our ocean's resources;

**NOW THEREFORE BE IT RESOLVED** that the Agdaagux Tribe of King Cove is **OPPOSED** to the nomination of an Aleutian Islands National Marine Sanctuary; and,

**BE IT FURTHER RESOLVED** that this resolution will be forwarded to Governor Bill Walker, NOAA Office of National Marine Sanctuaries, Alaska Legislature, and to the Alaska Congressional Delegation.

**PASSED AND APPROVED** by the Agdaagux Tribe on this 2<sup>nd</sup> day of January, 2015.

The foregoing resolution was adopted by the Agdaagux Tribal Council by a vote of 7 in favor, 0 opposed, and 0 abstaining, this 2<sup>nd</sup> day of January 2015.

  
Etta Kuzakin, President

ATTEST:   
Shelley Yatchmanoff, Secretary/ Treasurer

# AKUTAN CORPORATION



P.O. Box 8 AKUTAN, ALASKA 99553 (907) 698-2206 FAX (907) 698-2207

January 13, 2015

## IN OPPOSITION TO AN ALEUTIAN ISLAND NATIONAL MARINE SANCTUARY

The Akutan Corporation strongly opposes the designation of an Aleutian Island National Marine Sanctuary. The Public Employees for Environmental Responsibility (PEER) made the original nomination and it is now at National Oceanic and Atmospheric Administration (NOAA). Although NOAA's nomination process clearly states that "every nomination starts at the community level" we were not consulted about this outside effort and we are not aware of ANY local support from our community.

The only entity from Alaska to sign this nomination regarding the Aleutians was the Eyak Preservation Council, which is funded by outside environmental sources with no affiliation in the Aleutians.

Aleuts have lived in our region for thousands of years. We understand how to use our land in a sustainable manner. Fishing stocks in our region are at record levels due to good stewardship by management agencies North Pacific Management Council (NPFMC), Alaska Department of Fish & Game (ADF&G), and local residents. The Aleutian Islands region is subject to a Fishery Ecosystem Plan of the NPFMC, one of few such plans in the nation, to provide enhanced scientific information and measurable indicators to evaluate and promote ecosystem health, sustainable fisheries, and vibrant communities in the Aleutian Islands region.

Finally, much of the Aleutian Islands (277,100 nm<sup>2</sup>) is already designated as a habitat conservation area, and further protections are not warranted.

The proposed sanctuary would endanger our ability to work and provide for our families.

Sincerely,

Jacob Stepetin, President  
Akutan Corporation



## **Akutan Traditional Council**

P. O. Box 89

Akutan, Alaska 99553-0089

(907) 698-2300 / 2301 Fax

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January 13, 2015

### **IN OPPOSITION TO AN ALEUTIAN ISLAND NATIONAL MARINE SANTUARY**

The Akutan Traditional Council strongly opposes the designation of an Aleutian Island National Marine Sanctuary. The Public Employees for Environmental Responsibility (PEER) made the original nomination and it is now at National Oceanic and Atmospheric Administration (NOAA). Although NOAA'S nomination process clearly states that "every nomination starts at the community level" we were not consulted about this outside effort and we are not aware of ANY local support from our community.

The only entity from Alaska to sign this nomination regarding the Aleutians was the Eyak Preservation Council, which is funded by outside environmental sources with no affiliation in the Aleutians.

Aleuts have lived in our region for thousands of years. We understand how to use our land in a sustainable manner. Fishing stocks in our region are at record levels due to good stewardship by management agencies North Pacific Fisheries Management Council (NPFMC), Alaska Department of Fish & Game (ADF&G) and local residents. The Aleutian Islands region is subject to a fishery Ecosystem Plan of the NPFMC, one of few such plans in the nation, to provide enhanced scientific information and measurable indicators to evaluate and promote ecosystem health, sustainable fisheries, and vibrant communities in Aleutian Islands region.

Finally, much of the Aleutian Islands (277,100 nm2) is already designated as a habitat conservation area, and further protections are not warranted.

The proposed sanctuary would endanger our ability to work and provide for our families.

Sincerely,

Joe Bereskin  
President  
Akutan Traditional Council



**A RESOLUTION OF THE ALEUTIANS EAST BOROUGH ASSEMBLY OPPOSING THE  
NOMINATION OF THE ALEUTIAN ISLANDS NATIONAL MARINE SANCTUARY**

**WHEREAS**, the National Oceanic and Atmospheric Administration (NOAA) has opened a process to nominate potential national marine sanctuaries; and

**WHEREAS**, a collection of outside non-governmental organizations (NGOs) including Public Employees for Environmental Responsibility (PEER), have nominated an area greater than the size of the State of Alaska to be potentially designated as 'Aleutian Islands National Marine Sanctuary' (AINMS); and

**WHEREAS**, the NOAA National Marine Sanctuary nomination process clearly states that 'Every Nomination Starts at the Community Level'; and

**WHEREAS**, the Aleutians East Borough Assembly is not currently aware of ANY local support from local regional communities, tribes or local groups for this nomination; and

**WHEREAS**, the potential designation of the AINMS would make all current restrictions to fishing and other commerce permanent, and would authorize further onerous permanent restrictions; and,

**WHEREAS**, fishing stocks in this region are at record levels due to good stewardship by management agencies North Pacific Fishery Management Council (NPFMC), Alaska Department of Fish & Game (ADF&G) and local residents; and,

**WHEREAS**, The Optimal Response System recently recommended by the Aleutian Island Risk Assessment project will address risks associated with increasing shipping; and,

**WHEREAS**, the Aleutian Islands is subject to a Fishery Ecosystem Plan of the NPFMC, one of few such plans in the nation, to provide enhanced scientific information and measurable indicators to evaluate and promote ecosystem health, sustainable fisheries, and vibrant communities in the Aleutian Islands region; and,

**WHEREAS**, much of the Aleutian Islands (277,100 nm<sup>2</sup>) is already designated as a habitat conservation area, and further protections are not warranted; and,

**WHEREAS**, the local people who have been good stewards of this region for generations object to the audacity of those who propose to designate this vast area, our home, as a 'sanctuary'.

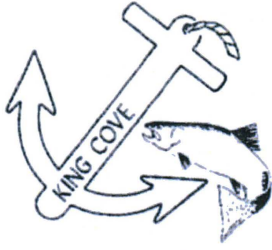
**NOW THEREFORE BE IT RESOLVED** that the Aleutians East Borough Assembly OPPOSES the nomination of the proposed Aleutian Islands National Marine Sanctuary; and,

**BE IT FURTHER RESOLVED** that this resolution will be forwarded to Governor Bill Walker, NOAA Office of National Marine Sanctuaries, Alaska Legislature, and to the Alaska Congressional Delegation.

**PASSED AND APPROVED** by the Aleutians East Borough on this 8<sup>th</sup> day of January, 2015.

  
**Stanley Mack, Mayor**

ATTEST:   
**Tina Anderson, Clerk**



# KING COVE CORPORATION

P.O. Box 38  
King Cove, AK. 99612  
907, 497-2312

Fax: 907, 497-2444  
e-mail: kcc@arctic.net

January 21, 2015

## IN OPPOSITION TO AN ALEUTIAN ISLAND NATIONAL MARINE SANCTUARY

The King Cove Corporation strongly opposes the designation of an Aleutian Island National Marine Sanctuary. The Public Employees for Environmental Responsibility (PEER) made the original nomination and it is now at National Oceanic and Atmospheric Administration (NOAA). Although NOAA's nomination process clearly states that "every nomination starts at the community level" we were not consulted about this outside effort and we are not aware of ANY local support from our community.

The only entity from Alaska to sign this nomination regarding the Aleutians was the Eyak Preservation Council, which is funded by outside environmental sources with no affiliation in the Aleutians. Aleuts have lived in our region for thousands of years. We understand how to use our land in a sustainable manner. Fishing stocks in our region are at record levels due to good stewardship by management agencies North Pacific Fishery Management Council (NPFMC), Alaska Department of Fish & Game (ADF&G) and local residents. The Aleutian Islands region is subject to a Fishery Ecosystem Plan of the NPFMC, one of few such plans in the nations, to provide enhanced scientific information and measurable indicators to evaluate and promote ecosystem health, sustainable fisheries, and vibrant communities in the Aleutian Island region.

Finally, much of the Aleutian Islands (277,100 nm) is already designated as a habitat conservation area, and further protections are not warranted.

***The proposed sanctuary would endanger our ability to work and provide for our families!***

Sincerely,

A handwritten signature in blue ink that reads "Dean Gould".

Dean Gould, President

IN OPPOSITION TO AN ALEUTIAN ISLAND NATIONAL MARINE SANCTUARY

cc:

National Marine Sanctuaries, William Douros, William.douros@noaa.gov  
Aleutians East Borough, Ernie Weiss, eweiss@aeboro.org  
NPFMC, Steve McLean, steve.maclean@noaa.gov  
NMFS Juneau, Sally Bibb, sally.bibb@noaa.gov  
ADF&G, Nicole Kimball, Nicole.kimball@alaska.gov  
Representative Edgmon, Rep.Bryce.Edgmon@akleg.gov  
Rep Edgmon staff, Tim Clark, Timothy.Clark@akleg.gov  
Senator Hoffman, Sen.Lyman.Hoffman@akleg.gov  
Governor Bill Walker, bill.walker@alaska.gov  
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Chad Padgett with Congressman Don Young's office, chad.padgett@mail.house.gov  
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Erik Elam with Congressman Don Young's office, erik.elam@mail.house.gov



## **BOARD RESOLUTION FY15-04**

### **A resolution of the Southwest Alaska Municipal Conference opposing the nomination of the Aleutian Islands National Marine Sanctuary**

**WHEREAS**, the National Oceanic and Atmospheric Administration (NOAA) opened the nomination process for National Marine Sanctuary (NMS) designations; and

**WHEREAS**, NOAA received a nomination from the Public Employees for Environmental Responsibility to designate waters located in Southwest Alaska as the Aleutian Islands National Marine Sanctuary (AINMS); and

**WHEREAS**, the nomination process set out on the NOAA National Marine Sanctuary (NMS) website emphasizes that the nomination demonstrate broad support from a variety of stakeholders and interested parties; and

**WHEREAS**, good government policy would dictate that the most important stakeholders and interested parties are residents, municipalities, communities, and businesses that due to proximity will be most affected by the establishment of a marine sanctuary; and

**WHEREAS**, no city, borough, community or tribe in Southwest Alaska was involved in preparing or submitting the AINMS nomination; and

**WHEREAS**, no city, borough, community or tribe in Southwest Alaska has come out in support of the AINMS nomination; and

**WHEREAS**, to date, the Qagan Tayagungin Tribe in Sand Point, the Agdaagux Tribe in King Cove, the Aleutians East Borough, Akutan Traditional Council, Akutan Corporation, and the City of Sand Point have written letters or passed resolutions in opposition to the nomination of the AINMS; and

**WHEREAS**, fishing and hunting activities in the AINMS nominated zone are already regulated by the North Pacific Fishery Management Council (NPFMC), the Alaska Department of Fish and Game (ADFG) and the U.S. Coast Guard (USCG); and

**WHEREAS**, astute management and enforcement by the NPFMC, ADFG, and USCG has created abundant world class fishing stocks; and



**WHEREAS**, regulation of much of the proposed AINMS is already subject to regulation of a Fishery Ecosystem Plan, the Marine Mammals Act, and designation as a habitat conservation area; and

**WHEREAS**, the Aleutian Island Risk Assessment project recently recommended The Optimal Response System to address risks associated with increased shipping through the AINMS nominated area; and

**WHEREAS**, further regulation of the vast AINMS area under National Marine Sanctuary designation would only lead to more confusion, conflict, and lack of clarity in the use of resources and support of transportation in Southwest Alaska; and

**WHEREAS**, the residents of the AINMS area have proven themselves to be good stewards of the areas resources for thousands of years without the benefit of NMS designation and have registered unqualified opposition to the nomination.

**NOW THEREFORE BE IT RESOLVED** by the Southwest Alaska Municipal Conference Board of Directors that it opposes the nomination of the proposed Aleutian Islands National Marine Sanctuary; and

**BE IT FURTHER RESOLVED** that upon passage of this resolution that it be transmitted to Governor Bill Walker, the Speaker of the Alaska House of Representatives, the President of the Alaska Senate, the NOAA Office of National Marine Sanctuaries, Senator Lisa Murkowski, Senator Dan Sullivan, and Congressman Don Young.

**PASSED AND APPROVED** by the Southwest Alaska Municipal Conference Board of Directors on this 20th day of January, 2015.

IN WITNESS THERETO:

ATTEST:

Alice Ruby,  
SWAMC President

Doug Griffin,  
SWAMC Executive Director