

Subcommittee on Water, Power and Oceans
Doug Lamborn, Chairman
Hearing Memorandum

March 13, 2017

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff, Subcommittee on Water, Power and Oceans (x5-8331)

Hearing: Oversight Hearing on *“Examining the Creation and Management of Marine Monuments and Sanctuaries”*

On Wednesday, March 15, 2017, at 10:00 am in 1324 Longworth House Office Building, the Water, Power and Oceans Subcommittee will hold a one-panel oversight hearing on *“Examining the Creation and Management of Marine Monuments and Sanctuaries.”*

Policy Overview:

- The National Oceanic and Atmospheric Administration (NOAA) manages thirteen Marine Sanctuaries and five Marine National Monuments. Some of these areas are co-managed with the Department of the Interior.
- The President can designate Marine National Monuments under the Antiquities Act of 1906, which doesn't require any public input or comment period.¹ Marine monuments generally do not allow commercial economic activity but certain recreational activities may be permitted within the bounds of each monument at the discretion of the Secretary of Commerce.
- Marine Sanctuaries are designated by the Secretary of Commerce. Unlike Marine National Monuments, there is a public comment period for any proposed Marine Sanctuary. Each Marine Sanctuary has its own, tailored management plan, however many of them limit or prohibit certain commercial economic activity.
- This hearing will examine the processes in which Marine Monuments and Sanctuaries are designated and managed, along with a focus on their impacts.

¹ http://www.fpir.noaa.gov/MNM/mnm_faq.html

Invited Witnesses (listed in alphabetical order):

Dr. John Bruno
Professor, Department of Biology
University of North Carolina
Chapel Hill, North Carolina

Mr. Chett Chiasson
Executive Director
Greater Lafourche Port Commission
Galliano, Louisiana

Mr. Brian Hallman
Executive Director
American Tunaboat Association
San Diego, California

The Honorable Jon Mitchell
Mayor
City of New Bedford
New Bedford, Massachusetts

Background

Marine National Monuments

The Antiquities Act of 1906 authorizes the President to reserve areas of the United States as National Monuments.² While National Monuments have been designated under sixteen Democratic and Republican Administrations, Presidents George W. Bush and Barack Obama used the Antiquities Act to create the only existing Marine National Monuments in federal and territorial waters.

President George W. Bush designated the nation’s first four Marine National Monuments, all of which are in the Pacific Ocean. The Marine National Monument Program generally prohibits federal leases for energy exploration³ and commercial fishing, while some allow the Secretary of Commerce to “permit noncommercial fishing

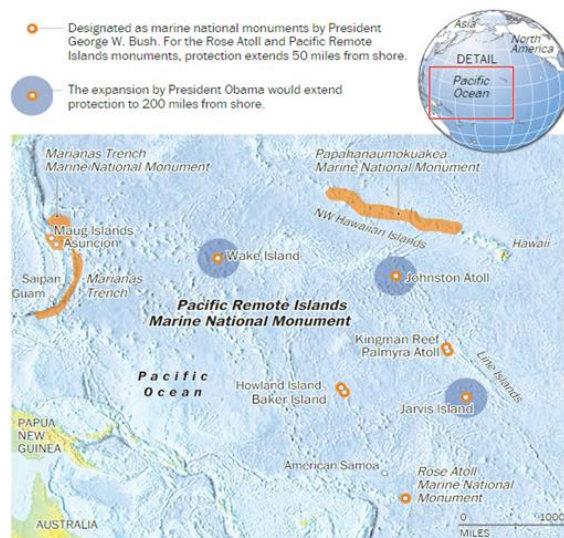


Figure 1: Expansion of Pacific Remote Islands Marine National Monument by President Barack Obama. Source: <https://www.washingtonpost.com/apps/g/page/national/expansion-of-a-marine-monument/1101/>

² http://www.fpir.noaa.gov/MNM/mnm_faq.html

³ [Congressional Research Service: National Monuments and the Antiquities Act, July 20, 2010](http://www.congressionalresearchservice.org/NationalMonumentsandtheAntiquitiesActJuly202010)

upon request.⁴

The four Monuments – the Papahānaumokuākea, Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments – totaled roughly 336,000 square miles. In 2014, President Obama expanded the Pacific Remote Islands Marine National Monument from 86,888 to roughly 490,000 square miles – at the time the largest expansion in U.S. history.⁵ This expansion created roughly 403,000 square miles of new protected area, 67,000 square miles more than the total area that President Bush set aside with four Marine National Monument designations.

In August 2016, President Obama further expanded the Papahānaumokuākea Marine National Monument, enlarging the monument by roughly 442,000 square miles to create the largest conservation area on Earth at 582,578 total square miles.⁶ This expansion was met with much enthusiasm and dismay. Supporters of the expansion applauded Obama’s decision, calling it “one of the most important actions an American president has ever taken for the health of the ocean,” citing long term benefits to fish species and habitat.⁷ Opponents of the expansion, such as former U.S. Senator Daniel Akaka (D-HI) and former Hawaii Democratic Governor George Ariyoshi, saw it as an act of federal overreach that would harm native Hawaiian livelihoods and cultural practices. Akaka and Ariyoshi further suggested that such an expansion would impact Hawaii’s ability to follow through with trust responsibilities to island natives.⁸ A witness will testify about this expansion’s impacts on the fishing industry.

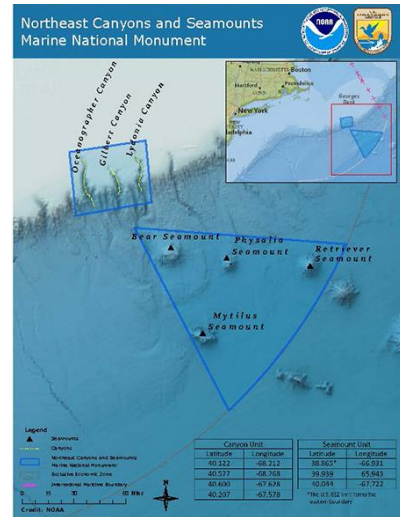


Figure 2: Northeast Canyons and Seamounts Marine National Monument. Source: https://www.greateratlantic.fisheries.noaa.gov/mediacenter/2016/september/22_northeast_canyons_and_seamounts_faqs.html

In September 2016, in response to petitions by Pew⁹ and Conservation Law Foundation (CLF),¹⁰ President Obama designated the fifth Marine National Monument in the Atlantic off the coast of Cape Cod, Massachusetts.¹¹ Some opponents saw the use of the Antiquities Act for this designation as a way to skirt the transparent, public habitat conservation process afforded under the Magnuson-Stevens Fisheries Conservation and Management Act, which governs fisheries in federal waters.¹² The economic impacts on the

⁴ [Presidential Proclamation 9173, September 25, 2014](#)

⁵ [Washington Post: Obama to Create World’s Largest Protected Marine Reserve in Pacific Ocean, September 25, 2014](#)

⁶ [Presidential Proclamation – Papahānaumokuākea Marine National Monument Expansion, August 26, 2016](#)

⁷ [Senator Brian Schatz: President Obama Expands Papahānaumokuākea Marine National Monument, August 26, 2016. \(press release\)](#)

⁸ [Daniel Akaka, George Ariyoshi, Benjamil Cayetano letter to Barack Obama, Proposed Expansion of Papahānaumokuākea Marine National Monument, July 22, 2016](#)

⁹ [Pew Charitable Trusts, Take Action: Permanently Protect the ‘Grand Canyons,’ Sea Mountains, and Cashes Ledge off New England’s Coast \(petition\)](#)

¹⁰ [Conservation Law Foundation, Tell President Obama: Marine National Monument for All of New England’s Ocean Treasures \(petition\)](#)

¹¹ [Presidential Proclamation – Northeast Canyons and Seamounts Marine National Monument, September 15, 2016](#)

¹² [Official Testimony of Jon Williams to the Committee on Natural Resources, September 29, 2015, Pg. 2](#)

fishing industry could be substantial. Mr. David Borden, Executive Director of the Atlantic Offshore Lobstermen’s Association, recently wrote: “Economic impacts were not analyzed. Using confidential industry information, we estimate financial impacts on the lobster, crab, squid, mackerel and butterfish fisheries to be approximately \$30 million directly and \$100 million when multiplied across the economy.”¹³ A witness will testify on the designation of this monument.

While each of the Marine National Monuments has specific prohibitions written into the Presidential Proclamation designating them, generally all commercial economic activity is banned within the boundaries of these monuments. However, in the cases of the Papahānaumokuākea¹⁴ and Northeast Canyons and Seamounts¹⁵ monuments, some commercial fishing activities were given a grace period of five or seven years from designation, respectively. Recreational fishing activities may be permitted at the discretion of the Secretary of Commerce.

National Marine Sanctuaries

NATIONAL MARINE SANCTUARY SYSTEM



Figure 3: The National Marine Sanctuary System. Source: <http://graysreef.noaa.gov/>

Under the authority of the National Marine Sanctuaries Act,¹⁶ the National Oceanic and Atmospheric Administration (NOAA) manages a system of thirteen marine sanctuaries: five in the West Coast Region, two in the Pacific Islands Region, three in the Northeast and Great Lakes Region, and three in the Southeast Region.¹⁷ According to NOAA, the sanctuary system protects the natural and cultural features in the ocean and provides secure habitat for marine species.¹⁸ Of

¹³ Mr. David Borden, Executive Director, Atlantic Offshore Lobstermen’s Association, letter to Chairman Rob Bishop, March 9, 2017

¹⁴ [Presidential Proclamation – Establishment of the Northwestern Hawaiian Islands Marine National Monument, June 26, 2006](#)

¹⁵ [Presidential Proclamation – Northeast Canyons and Seamounts Marine National Monument, September 15, 2016](#)

¹⁶ [Title 16, Chapter 32, Sections 1431 et seq. United States Code](#)

¹⁷ <http://sanctuaries.noaa.gov/>

¹⁸ <http://sanctuaries.noaa.gov/about/faqs/>

the thirteen sanctuaries, Republican administrations (Ford, Reagan, and H.W. Bush) designated six and Democrat administrations (Carter, Clinton) designated four.

In 2012, the Obama Administration expanded the Fagatele Bay National Marine Sanctuary from 0.25 to 13,581 square miles and renamed it the National Marine Sanctuary of American Samoa.¹⁹ While sanctuaries do not automatically prohibit commercial fishing as Marine Monuments have, the National Marine Sanctuary of American Samoa prohibits harvesting of multiple species and the use of various methods of fishing, some of which are traditional techniques used by the people of American Samoa.²⁰ A witness will testify about these impacts.

On June 13, 2014, NOAA published a final rule²¹ in the Federal Register re-establishing the sanctuary public nomination process. According to the rule, this process allows communities to submit applications to NOAA to consider a nomination of a sanctuary. The rule defines communities as “a collection of interested individuals or groups; local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level...”²² Through this rule, NOAA identified four criteria and seven management considerations that are to be applied to all publicly nominated sanctuaries in order to advance through the nomination process. If the nomination does not include the basic information outlined in the final rule, NOAA may decline or send the nomination back and ask for additional information prior to further review.²³

Once the nomination is deemed complete, NOAA will evaluate it based on the four criteria outlined by the agency and, if accepted, NOAA will add the nomination to a sanctuary “inventory.”²⁴ Once nominations have been added to the inventory, NOAA – at its discretion – can initiate the standard designation process, which includes public scoping sessions, a draft sanctuary proposal, and public review of such proposal before a final designation is published.²⁵

There are currently two publicly nominated sanctuaries that are in the standard designation process: the Mallows Bay-Potomac River National Marine Sanctuary,²⁶ and the Wisconsin-Lake Michigan National Marine Sanctuary.²⁷ NOAA is currently hosting public meetings on each of the proposals and both are open to public comment through March 31, 2017.²⁸ In addition, one additional sanctuary has advanced and another has been withdrawn. Specifically, the Hudson Canyon National Marine Sanctuary, nominated by the New York Aquarium in November 2016,²⁹ has been added to the inventory of successful nominations where

¹⁹ [National Oceanic and Atmospheric Administration, National Marine Sanctuary of American Samoa Regulations, 15 CFR 922 \(j\)](#)

²⁰ [Id at 19](#)

²¹ [79 FR 33851, June 13, 2014](#)

²² [Id at 21](#)

²³ <http://www.nominate.noaa.gov/>

²⁴ [Id at 23](#)

²⁵ <http://sanctuaries.noaa.gov/management/designations.html>

²⁶ [82 FR 2254, January 9, 2017](#)

²⁷ [82 FR 2269, January 9, 2017](#)

²⁸ [Id at 26 and 27](#)

²⁹ [New York Aquarium: Hudson Canyon National Marine Sanctuary Nomination, November 2016](#)

it will remain until NOAA decides to move forward with a formal designation.³⁰ Conversely, the Baltimore Canyon Urban National Marine Sanctuary, nominated by the National Aquarium in December 2016,³¹ has since been withdrawn by the sponsor.³²

Another sanctuary could be expanded by NOAA. On February 3, 2015 NOAA published a Notice of Intent³³ in the Federal Register to prepare a Draft Environmental Impact Statement (EIS) on expanding the Flower Garden Banks Marine Sanctuary off of the coasts of Texas and Louisiana. This sanctuary was designated under the George H.W. Bush Administration.³⁴ The Draft EIS was published in June 2016, and identified five action alternatives.³⁵ Alternative one would be to retain the current boundaries, while the other four represent varied levels of expansion. The agency's preferred alternative (*figure 4*) would expand the current area by approximately 327 square miles, almost six times larger than the current area.³⁶

While NOAA suggests that the preferred alternative is based on recommendations put forth by the sanctuary advisory board, some members of that board have opposed this proposal, calling the move a “land grab” and a “bait and switch” by the agency.³⁷ However, proponents of the expansion state that it would help further protect economically valuable fish species in the Gulf of Mexico.³⁸ The superintendent of the sanctuary has stated that the larger expansion plan will help compensate the public for areas lost due to the Deepwater-Horizon oil spill.³⁹ A witness will testify on the proposed expansion.

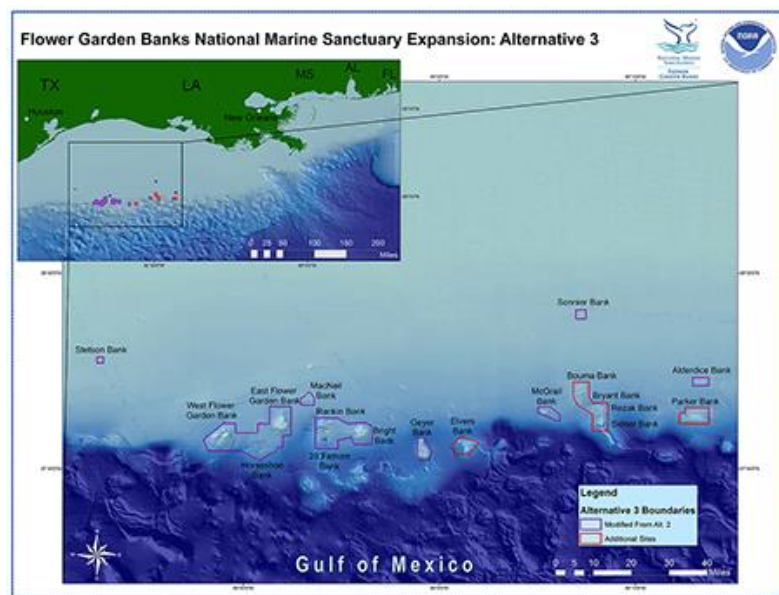


Figure 4: Flower Garden Banks National Marine Sanctuary Expansion Alternative 3
Source: <http://flowergarden.noaa.gov/management/expansiondeis.html>

³⁰ [John Armor, Director of the Office of National Marine Sanctuaries, letter to Jon Dohlin, Vice President of Wildlife Conservation Society's New York Aquarium, February 23, 2017](#)

³¹ [National Aquarium: Baltimore Canyon Urban National Marine Sanctuary Nomination, December 2016](#)

³² [John Racanelli, CEO of the National Aquarium, letter to John Armor, Director of the Office of National Marine Sanctuaries, January 30, 2017](#)

³³ [80 FR 5699, February 3, 2015](#)

³⁴ [56 FR 63634, December 5, 1991](#)

³⁵ [National Oceanic and Atmospheric Administration: Draft Environmental Impact Statement: Sanctuary Expansion, June 2016, pg. ES-4](#)

³⁶ [Id at 35, pg. ES-4](#)

³⁷ [The Houston Chronical: Marine Sanctuary Expansion Plan is at Center of Controversy. Harvey Rice, June 20, 2016](#)

³⁸ [The Sierra Club: Texans Speak up for Marine Sanctuary Expansion in Gulf of Mexico. Heathery Moyer, July 22, 2016](#)

³⁹ [The Houston Chronical: Marine Sanctuary Expansion Plan is at Center of Controversy. Harvey Rice, June 20, 2016](#)