

Special Use Permits



Section 310 of the National Marine Sanctuaries Act (16 U.S.C. § 1441; NMSA) allows the Secretary of Commerce, delegated to the Office of National Marine Sanctuaries) to issue special use permits to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource. Special use permits are generally issued for concessionaire-type activities and other commercial activities that require access to the sanctuary to achieve a desired goal.

Public notice

The NMSA requires, among other things, the ONMS to provide "appropriate public notice before identifying any category of activity subject to a special use permit" (see section 310(b) of the NMSA). To comply with this directive from Congress, the ONMS has issued Federal Register notices to describe the types of activities for which it can require the issuance of a special use permit (78 FR 25957(May 3, 2013); 82 FR 42298 (Sept.7, 2017); 89 FR 48272 (June 6, 2024)). To qualify for a special use permit, an activity must be among those listed in these notices. The notices list the following activities:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary.
2. The placement and recovery of objects related to commercial filming.
3. The continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary (Note, **89 FR 66689** (<https://www.federalregister.gov/documents/2024/08/16/2024-18099/notice-of->

modification-to-the-special-use-permit-sup-category-for-the-continued-presence-of)

[August 16, 2024] modified this SUP category so that, for a two-year period, this SUP category does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024).

4. The disposal of cremated human remains within or into any national marine sanctuary.
5. Recreational diving near the USS Monitor.
6. Fireworks displays.
7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries.
8. The continued presence of a pipeline transporting seawater to or from a desalination facility (applies only to Monterey Bay National Marine Sanctuary).
9. The operation of tethered underwater mobile systems at shipwreck sites within Lake Ontario National Marine Sanctuary

If a proposed activity does not fall within the description of one of the types of activities for which ONMS has provided public notice, ONMS would need to publish a new *Federal Register* notice and solicit public comments on the use of special use permits for the type of activity proposed prior to issuing a permit.

Terms of special use permits

The NMSA requires special use permits to contain four specific conditions. The NMSA requires that special use permits:

- Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
- Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
- Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

As is the case with general permits, in addition to these statutorily-mandated conditions, the ONMS can place additional conditions on special use permits specific to the activity being permitted.

Permit fees

The NMSA allows the ONMS to assess and collect fees for the conduct of any activity under a special use permit. If it is assessed, the amount of the fee is calculated by adding all of the following.

- The costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
- The costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
- An amount that represents the fair market value of the use of the sanctuary resource.

Application requirements

Unless otherwise instructed, applicants for special use permits should submit a regular permit application form and comply with the “Instructions for Submitting Applications for NMS Permits and Authorizations.” In addition, the NMSA requires the following for special use permits:

- **Comprehensive liability insurance:** Applicants will be required to purchase and maintain comprehensive general liability insurance, or to post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims. Applicants should show proof of such insurance with the rest of the application materials.
- **Annual financial report:** Most permits require some form of reporting. Special use permit recipients are also required to submit financial reports on or before December 31 of each year the permit is valid. These reports should detail the activities conducted under the permit during the reporting year and any revenues derived from those activities.

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