

NOTE: The following questions were presented via email (dated January 18, 2017) by Marty Gary (PRFC) to Sammy Orlando (NOAA Sanctuaries), Kelly Collins and Kim Hernandez (MD DNR). These questions were posed to Sammy and Kelly during a conference call on January 13, 2017 with Marty Gary and Ellen Cosby (PRFC), AJ Erskine (Chair, PRFC), Jamie Bowling (Vice Chair, PRFC Fin Fish Advisory Council), and Michael Mayo (Mayo Law). Marty, Ellen and Sammy will present the responses to the PRFC Fin Fish Advisory Council on February 22, 2017.

Q: Who currently is the top level manager in NOAA Sanctuaries Program?

A: John Armor, Director

Q: Who currently is the top level person at the Maryland Historical Trust?

A: Elizabeth Hughes, Director/State Historic Preservation Officer

Q: Can a NOAA sanctuary designation be rescinded after adoption?

A: No. The National Marine Sanctuaries Act does not contemplate rescission following designation.

Q: Can NOAA change the management plan after adoption?

A: Yes. Section 304(e) of the National Marine Sanctuaries Act requires that the management plan strategies and priorities be evaluated and modified, as appropriate, every 5 years through a public process.

The management plan review is conducted in cooperation with sanctuary co-managers and in consultation with the sanctuary advisory council. The management plan review process is informed by a sanctuary "condition report" which characterizes the current status of and any changes to sanctuary resources, threats and management options consistent with the goals and objectives established for the sanctuary in the terms of designation.

NOAA's Office of National Marine Sanctuaries (ONMS) defines the management elements of a national marine sanctuary through the management plan, regulations, and terms of designation. These documents lay out the geographic area, resources, and regulatory and non-regulatory management actions of the sanctuary in the context of other federal, state, and local management. NOAA ONMS can update and realign these management elements to address changing conditions, community priorities, or based on new information about the resources and threats to the resources through public processes.

In the case for Mallows-Potomac, the proposed management plan, regulations, and terms of designation describe the proposed area, define the sanctuary resources as the maritime heritage assets, and describe non-regulatory program plans and proposed regulations to manage and protect those resources. The proposed designation do not include natural resources as sanctuary resources; therefore, the proposed sanctuary would have no authority to regulate commercial or recreational fishing. If after the designation of Mallows-Potomac as a national marine sanctuary, any intention to change the boundaries and/or impose Federal

(NMSA) authority on the management of natural resources would have to be proposed through a public process like the current process and require consent from state and county co-managers. The public process would include an environmental analysis and public input on any proposed changes.

Q: Who will determine who the Sanctuary Manager will be? Is this an appointed position? Recruited? Recruited in house? Is this already known?

A: Administration of the National Marine Sanctuary System – including designating a sanctuary manager – has been delegated to the Director of the Office of National Marine Sanctuaries (John Armor). The sanctuary manager is recruited through the Federal hiring process defined by the Office of Personnel Management. Hiring a sanctuary manager will only be considered after designation.

Q: Who will determine who is to be placed on the Sanctuary Advisory Council?

A: Section 315 of the National Marine Sanctuaries Act authorizes the Secretary of Commerce to establish an advisory council. Administration of advisory councils has been delegated to the Director of the Office of National Marine Sanctuaries (John Armor).

All councils are established to address the needs of the individual sanctuary. As such, the types of seats vary across sanctuaries due to the types of sanctuary resources, public uses of the sanctuary, the diversity of constituent and community groups, and co-management representation among other considerations. However, seven types of seats are common to most if not all of the councils: education, research, conservation, citizen-at-large, fishing (commercial, recreational, or both), tourism, and business/industry. For Mallows-Potomac, an advisory council will be established following designation and may include as many as 15 seats (plus an alternate member for each seat).

Q: Can you provide the affirming language that was referenced in the DEIS and elsewhere (draft management plan) that discusses not impacting fishing activities and access?

A: On January 23, 2017, Kim Hernandez (MD DNR) extracted the exact language from the draft designation documents and provided these to Marty Gary. That document was made available to the Fin Fish Advisory Council prior to their meeting on January 25.

Q: Can you provide GPS coordinates for all locations of interest in the sanctuary polygons? We should look at the worst case scenario, with the largest polygon and all locations of interest. We need to cross reference this with our fixed fishing gear GPS coordinates, and other applicable data. We need to loop the responsible person (Susan Langley?) at the Maryland Historical Trust (MHT).

A: These were provided and analyzed during a meeting at PRFC on February 3, 2017 by Susan Langley (MD Historical Trust/State Underwater Archaeologist). Marty Gary, Ellen Cosby, Jamie Bowling, Sammy Orlando (NOAA Sanctuaries) and Kim Hernandez (MD DNR) were present. The initial findings appear to indicate little, if any, potential conflict. Ellen and Susan continue to share information with respect to a few remaining questions. The findings will be presented to the Fin Fish Advisory Council on February 22.

NOTE: The following questions have been presented by Jamie Bowling to Sammy Orlando and Marty Gary via personal communication. Thus, the following represents Sammy's interpretation of those questions and, accordingly, answers based on those interpretations.

Q: In the proposed rule, there are references to the Director having authority to rescind existing permits. For example, on p.2262, Section 922.48 (f): "The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause." Does this apply to fishing permits and licenses issued through the authorities of PRFC and/or MD DNR?

A: No. The Director does not have authority to rescind existing permits issued through other authorities, such as PRFC and MD DNR. NMSA Section 304(c) provides:

"(1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary."

With that said, the language cited in Section 922.48 and similar references are specific to provisions related to sanctuary issued "General Permits" and "Authorizations" – whereby NOAA is proposing to authorize permits to allow certain activities that would otherwise violate prohibitions in the sanctuary. In those cases, the Director would have authority to rescind the sanctuary-related permit or authorization. In the case of commercial and recreational fishing in Mallows-Potomac, these activities are not considered prohibited activities, and are not subject to the General Permits or Authorization sections of the Proposed Rule.

Q: The language associated with this regulation is unclear: "Interfering with Investigations. NOAA is proposing a regulation to prohibit interfering with sanctuary enforcement activities". Does this mean that during an incident, commercial and/or recreational fishing could be impacted?

A: NOAA does not anticipate that sanctuary-related investigations or enforcement activities will adversely impact commercial or recreational fishing. However, a fisherman could potentially be charged with a violation of Section 922.203(a)(3), as proposed if the fishermen interferes with, obstructs, delays or prevents a sanctuary-related investigation.

Q: Areas of the Potomac River are being considered for designation as Essential Fish Habitat for Atlantic Sturgeon. How does designation as a National Marine Sanctuary affect this?

A: Essential Fish Habitat (EFH) designations occur and will remain under the authority of NOAA's National Marine Fisheries Service and the appropriate Regional Fishery Management Council. In the case for designating EFH in the Potomac following sanctuary designation, NOAA's Office of National Marine Sanctuaries would be consulted with respect to evaluating potential impacts of that action on the historic/maritime resources of the area.

In addition, ONMS would be required to consult with NOAA's National Marine Fisheries Service on any action we would propose that is determined to affect EFH.