

Marine Scientific Research and the National Marine Sanctuaries Act, 16 U.S.C. §§1431-1445c-1

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment¹ with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities as national marine sanctuaries. 16 U.S.C. §1431(b). The primary objective of the NMSA is the protection of marine resources, such as coral reefs, kelp forests, and sunken historical vessels. Management of the national marine sanctuary system, which comprises 13 sanctuaries,² has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries.

Sanctuaries have been designated by the Secretary of Commerce as well as through laws enacted by Congress. National marine sanctuaries have been established off of the continental United States in the Atlantic and Pacific Oceans and in the Gulf of Mexico and the Great Lakes. There are also national marine sanctuaries off of Hawaii and American Samoa. Sanctuaries may include waters and submerged lands in the territorial sea as well as the U.S. EEZ. Seven of the 13 National Marine Sanctuaries are located in whole or in part in the U.S. EEZ.³

The NMSA prohibits any person from destroying, causing the loss of, or injuring any sanctuary resource⁴ that is managed under law or regulation for any sanctuary.⁵ 16 U.S.C. §1436(1). It is also unlawful to possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource that has been taken in violation of the NMSA. 16 U.S.C. §1436(2). NOAA has promulgated site-specific regulations to protect the unique resources of each sanctuary.⁶

The NMSA and its implementing regulations are applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. 16 U.S.C. §1435(a). No regulations may be applied to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with generally recognized principles of international law; an agreement between the United States and the

¹ The NMSA defines "marine environment" to mean "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law." 16 U.S.C. §1432(3). The NMSA further provides that the "area of application and enforceability of [the Act] includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law." 16 U.S.C. §1437(k).

² The 13 National Marine Sanctuaries are listed at <http://sanctuaries.noaa.gov/about/welcome.html>.

³ National Marine Sanctuaries located in whole or in part in the U.S. EEZ are: (1) Monitor National Marine Sanctuary; (2) Stellwagen Bank National Marine Sanctuary; (3) Gray's Reef National Marine Sanctuary; (4) Flower Garden Banks National Marine Sanctuary; (5) Cordell Bank National Marine Sanctuary; (6) Olympic Coast National Marine Sanctuary; and (7) Gulf of the Farallones National Marine Sanctuary.

⁴ The NMSA defines "sanctuary resource" as any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the sanctuary. 16 U.S.C. §1432(8).

⁵ Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resources are subject to consultation with the Secretary of Commerce. 16 U.S.C. §1434(d)(1)(a).

⁶ See 15 CFR Part 922.

foreign state of which the person is a citizen; or an agreement between the United States and the flag state of a foreign vessel, if the person is a crew member of the vessel. Id.

One of the express purposes of the NMSA is to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources within national marine sanctuaries. 16 U.S.C. §1431(b)(5). Activities conducted pursuant to scientific research that would otherwise violate the regulations for a national marine sanctuary may be lawfully undertaken if pursuant to a research permit. For example, in most national marine sanctuaries it is unlawful to alter or place any material or other matter on the submerged lands of the sanctuary. However, certain otherwise prohibited activities may be permitted to the extent they are compatible with the resource protection mandate of the NMSA and meet the regulatory requirements for a sanctuary research permit. Sanctuary-specific regulations as well as regulations of general applicability⁷ must be consulted by a prospective applicant to determine the availability of research permits, application requirements, and issuance criteria. A useful starting point is the NOAA web site at <http://sanctuaries.noaa.gov/management/permits/welcome.html>.

In general, to qualify for a research permit, a project should further research related to sanctuary resources and qualities; research proposals with little or no applicability to sanctuary management goals (e.g., the information the proposal expects to yield is either widely known or inconsequential to sanctuary management) would not likely be approved.

⁷ 15 CFR §922.48.