

United States Senate

August 21, 2017

Mr. Benjamin Friedman
Acting Administrator
National Oceanographic and Atmospheric Administration
1401 Constitution Ave, NW
Washington, D.C. 20230

Dear Administrator Friedman,

I am writing to formally submit comments to the National Oceanographic and Atmospheric Administration (NOAA) pertaining to its review of the 11 designations and expansions of National Marine Sanctuaries and Marine National Monuments listed in Executive Order 13795.

On June 27, 2017, I held a hearing as Chairman of the Senate Commerce, Science, and Transportation Committee's Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard entitled, "Marine Sanctuaries: Fisheries, Access, the Environment, and Maritime Heritage." At the hearing, the Subcommittee heard from experts from the commercial and recreational fishing industry as well as a former NOAA Administrator about the National Marine Sanctuary System and, to a lesser extent, all marine protected areas. Marine National Monuments serve a similar purpose, and feature many of the same characteristics, as National Marine Sanctuaries (NMS) that are problematic for local communities and coastal economies.

While the concept of National Marine Sanctuaries and Marine Moments is well-intentioned, many of these protected areas have caused some challenges for coastal and Great Lakes communities across the country that are dependent upon the abundant resources found in their waters. This is particularly true in Alaska whose economy depends on its robust commercial fishing industry. Fisheries restrictions imposed outside of the process utilized by Regional Fishery Management Councils on these areas are problematic for the communities who rely on access to commercial fisheries.

Similar to the Antiquities Act, the National Marine Sanctuary Act is one of the few laws that allows for unilateral and restrictive conservation designations by the Executive branch. In 2014, NOAA reestablished a process by which individuals and entities may nominate areas for consideration as a NMS. The criteria for areas that are eligible to become a NMS is considerably broad. Since then, a multitude of nominations have been submitted. This is of serious concern given the limited resources the Office of National Marine Sanctuaries currently has available to manage these areas. As new areas are designated, existing resources are stretched ever thinner. The Sanctuary Act wisely recognized this potential pitfall, and includes language that prohibits the creation of new sanctuaries if their establishment would threaten the management efforts of other sanctuaries. Consideration should be given to providing clearer metrics of support for NMS

designations, particularly in regard to community support. It is critical, in my opinion, that ocean resource users be supportive of the nomination.

While considerable attention has been placed on the mandatory and methodical review of community-based NMS nominations, there is little in the way of mandatory community engagement in the establishment of a sanctuary's "Terms of Designation", which represent the final regulations that apply within its boundaries. The National Marine Sanctuary Act requires stakeholder engagement, but has no stipulation that any of it be taken into consideration. This can lead to communities feeling betrayed by the agency when the established sanctuaries are unrecognizable to the localities who spent years working with NOAA to form a mutually beneficial designation and management structure.

I believe that the Office of National Marine Sanctuaries should take immediate action to strengthen stakeholder engagement in its management decisions, starting with a review of the Charters for Advisory Councils developed by sanctuaries and imposed on the communities. This review should focus on ensuring that communities have authentic stakeholder representation and a credible voice in management. My Subcommittee heard testimony that recommendations of Advisory Councils are either ignored, or the makeup of the Councils are manipulated, so that NMS managers hear the advice they want to hear.

The NMS designation process gives NOAA virtually limitless authority to outline the regulations and administrative actions that apply in these sanctuaries. I would like to see changes to the National Marine Sanctuary designation process that require the agency to incorporate local community and stakeholder recommendations into the "Terms of Designation" to ensure that the livelihood of local communities are not irreparably harmed. Likewise, some review process should be incorporated that can weigh community expectations against NMS actions.

These considerations should not be limited to NMS designations, but also to those of marine monuments, which require no stakeholder consultation whatsoever. The century-old Antiquities Act enables the President to unilaterally establish national monuments on federal lands and waters. Historically, these designations were made sparingly, but in recent years the process has become a political tool by which the Executive branch can limit access to economically viable resources. This action is often taken at the request of non-affected parties such as environmental groups. This is problematic when monuments are established without the use of best-available science, absent stakeholder engagement, and inattentive to the economic consequences for local communities. In recent decades, Alaskan waters have been considered a target for monument designations despite the rigorous, science-based, and sustainable management structure to which Alaskan stakeholders adhere.

Another concerning feature of National Marine Sanctuaries and marine monuments are the duplicative fisheries regulations that can limit sustainable and economically beneficial commercial and recreational fishing, usurping the authority of existing management entities such as the Regional Fisheries Management Councils (RFMC). Under the guidance of the RFMCs, which were established by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 1976, the United States has cultivated and maintained the world's most healthy and sustainable-managed fishery system on the planet. For this reason, I question the need to grant National Marine Sanctuaries and marine monuments the authority to override Regional Fisheries Management Councils and establish areas that are exempt from their jurisdiction.

I believe the cost of managing these areas is duplicative when they are already protected and managed by the RFMC process and the National Marine Fisheries Service (NMFS), which set regulations and coordinates management using a best-science approach and a rigorous public process. In Alaska, for example, over 724,000 nautical miles of the exclusive economic zone (EEZ) are protected and closed to some or all forms of fishing. Additionally, the North Pacific Fishery Management Council (NPFMC) employs fishery ecosystem plans (FEPs) and habitat conservation zones where appropriate. The management of these areas by the NPFMC and NMFS is critical to the robust Alaskan fisheries that are so important to the nation. Management by sanctuary designation in these areas is duplicative and unnecessary. The Subcommittee also heard testimony that some sanctuaries have used their stature to advocate to other agencies for fishing restrictions, and have done so without the support of fishermen, and perhaps without using the best available science. Actions like this create resistance to new sanctuary nominations and undermine support from key stakeholders.

I ask that NOAA kindly take these requests into consideration and that meaningful changes be made that will enhance the existing, insufficient stakeholder engagement processes by which NMS and marine monuments are established. Furthermore, we ask that you contemplate the manner in which the management of these areas conflict with existing laws.

I appreciate your consideration of this request, and stand ready to assist you in any way to ensure the most beneficial outcome for federal waters and local communities.

Sincerely,



DAN SULLIVAN, CHAIRMAN

Subcommittee on Oceans, Atmosphere, Fisheries, and
Coast Guard