

**RECORD OF DECISION**  
**for the**  
**FINAL ENVIRONMENTAL IMPACT STATEMENT**  
**on the**  
**Designation of the Wisconsin Shipwreck Coast**  
**National Marine Sanctuary**

**National Oceanic and Atmospheric Administration**  
**Office of National Marine Sanctuaries**

**June 2021**

**I. INTRODUCTION**

This document comprises the National Oceanic and Atmospheric Administration’s (NOAA’s) Record of Decision (ROD) for the final environmental impact statement (FEIS) and final management plan published on June 5, 2020 for the Wisconsin Shipwreck Coast National Marine Sanctuary Designation. This ROD includes a description of the decision, a summary of the alternatives considered, a description of the environmentally preferable alternative, and a discussion of the factors and considerations balanced by NOAA in making its decision.

Since this environmental review began before September 14, 2020, which was the effective date of the amendments to the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (85 FR 43304, Jul. 16, 2020), NOAA prepared the ROD for this action using the prior version of the CEQ regulations. 40 CFR Parts 1500 (1978, as amended in 1986 and 2005).

**II. DECISION**

This ROD documents NOAA’s decision to designate Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS, or sanctuary). NOAA is selecting the Preferred Alternative to designate a 962 square-mile area in the waters of Lake Michigan in the State of Wisconsin adjacent to Ozaukee, Sheboygan, Manitowoc, and Kewaunee counties. The area includes a collection of nationally significant underwater cultural resources, including 36 known shipwrecks and nearly 60 suspected shipwrecks.

NOAA will implement regulations to prohibit activities that could damage or otherwise injure underwater cultural resources, including a prohibition on grappling into and anchoring on shipwreck sites where a mooring buoy is present. NOAA postpones the effective date of the regulation prohibiting grappling into or anchoring on shipwreck sites until October 1, 2023, to provide NOAA with adequate time to develop a shipwreck mooring program and plan. This decision is based on the analyses in the accompanying FEIS and sanctuary designation documents, as described in detail below.

### III. ALTERNATIVES CONSIDERED

This section describes the alternatives NOAA considered in the FEIS, the rationale and process to develop the Preferred Alternative, and summarizes changes NOAA made to the Preferred Alternative after receiving comments on the DEIS.

In the FEIS, NOAA considered five alternatives with the two boundary options shown in Figure 1. The alternatives considered included the no-action alternative and 4 action alternatives. Each of the four action alternatives included three components: (1) a boundary component, (2) a regulatory component, and (3) a management plan component.

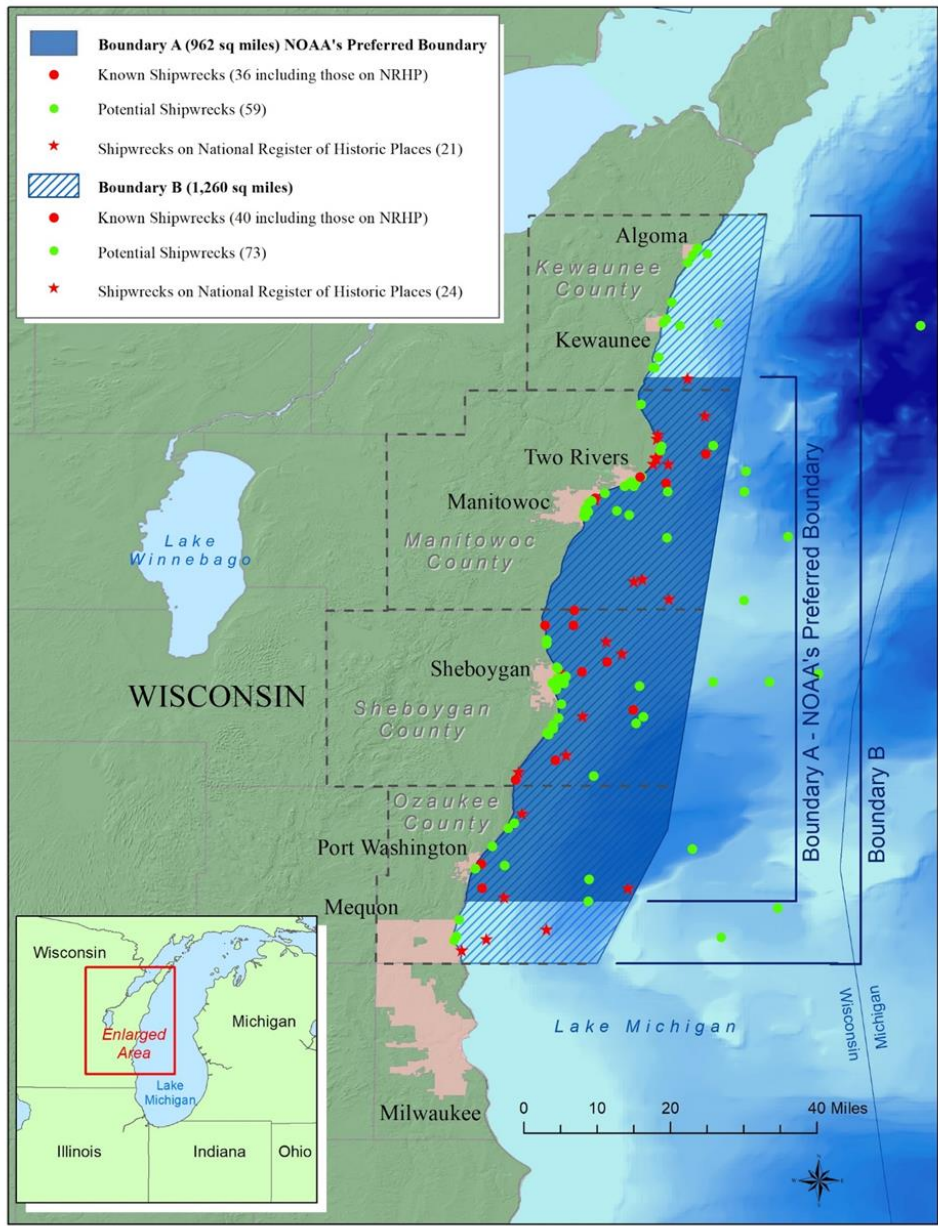


Figure 1: Map of boundary options considered for the sanctuary

### *No Action Alternative*

Under the no-action alternative, NOAA would not move forward with the designation of Wisconsin Shipwreck Coast National Marine Sanctuary.

### *Action Alternatives in the FEIS*

Under Alternative 1, NOAA considered designating a sanctuary that is 962 square miles and includes a portion of Lake Michigan waters off Ozaukee, Sheboygan, Manitowoc, and Kewaunee Counties (Boundary A in Figure 1). NOAA would implement regulations to prohibit activities that could damage or otherwise injure underwater cultural resources, including a prohibition on grappling into and anchoring on shipwreck sites where a mooring buoy is present.

Under Alternative 2, NOAA considered designating a 962 square-mile sanctuary (Boundary A in Figure 1). NOAA would implement the same regulations as described for Alternative 1, and add an additional prohibition on grappling into or anchoring on all sanctuary shipwreck sites. This was NOAA's Preferred Alternative in the FEIS.

Under Alternative 3, NOAA considered designating a sanctuary that is 1,260 square miles and includes a portion of Lake Michigan waters off Ozaukee, Sheboygan, Manitowoc, and Kewaunee counties (Boundary B in Figure 1). NOAA would implement the same regulations as described for Alternative 1.

Under Alternative 4, NOAA considered designating a sanctuary with a 1,260 square-mile boundary (Boundary B in Figure 1). NOAA would implement the same regulations as described for Alternative 2.

For all of the action alternatives, NOAA will take two years to phase-in the sanctuary-wide no-anchoring or grappling prohibition to allow time for implementation.

For all of the action alternatives, a management plan would be implemented. The management plan outlines a series of management goals and strategies in the areas of sanctuary resource protection, education and outreach, research, and operations. In addition, NOAA would conduct field operations to implement the regulations and management plan, including vessel operations, research, and the installation of shipwreck mooring buoys.

### *Alternatives Considered, but not Carried Forward*

NOAA also considered, but did not carry forward, two additional alternatives - a smaller total boundary area proposal and a lakeward boundary that would have extended to the Wisconsin / Michigan boundary which runs down the center of Lake Michigan.

The smaller 875-square-mile boundary was based on a 2008 Wisconsin Historical Society report that recommended this same area for a potential national marine sanctuary. After consultation with the State of Wisconsin during the designation process, NOAA's adjustments to the nominated boundary include excluding harbors and ports; expanding the southeast corner to

include the wreck of *Senator* (the location of which was previously unknown); expanding the northern boundary to include the shipwreck *America*; and moving the southern boundary to the shipwreck *Northerner*. Because the 875-square-mile nominated boundary was included within, and constitutes the majority of Boundary A (included in the Preferred Alternative), it was not analyzed as a distinct alternative.

NOAA considered moving the lakeward boundary of the proposed sanctuary to the State of Michigan boundary. The primary reason for considering this was historic vessel traffic routes between Wisconsin and Michigan. While there are no known shipwrecks in this additional area, the chances for discovery are somewhat high given the number of ships that traveled this route. However, this would add considerable area (1,290 sq. miles) to the sanctuary boundary without any known shipwrecks within that area. NOAA chose not to carry forward this alternative because it did not meet the purpose and need of the proposed action, as described in Chapter 2 of the FEIS.

#### *NOAA's original preferred alternative included in the DEIS and proposed rule*

The area of the Preferred Alternative boundary in the 2017 DEIS was increased from the boundary originally nominated in response to public scoping comments, consultation with the State of Wisconsin, and updated shipwreck location information from the state. The area was increased from the original 875-square-mile boundary to a 1,075-square-mile area that would protect 37 shipwrecks and related underwater cultural resources that possess exceptional historic, archaeological, and recreational value. The environmental effects of this proposed designation and alternatives were analyzed in the DEIS published concurrently with the proposed rule. NOAA also published a draft management plan describing the comprehensive proposed management framework envisioned for the area, including non-regulatory programs and activities, actions, and strategies to promote opportunities for research, education, and recreation in the area.

#### *Revisions in the FEIS and the final rule*

NOAA drafted the FEIS based on input received from federal, state, and local agencies, public comments, and newly available information (e.g., updated shipwreck locations). NOAA consulted with the State of Wisconsin regarding revisions between the DEIS and FEIS.

Many commenters on the DEIS were concerned that sanctuary designation would override state law regarding riparian rights of landowners along the lakeshore, and that the designation would create public access to areas where riparian owners have exclusive use. Commenters were likewise concerned that NOAA's proposal to use the state-recognized ordinary high water mark (OHWM) as its landward boundary could interfere with riparian rights. Some commercial shipping stakeholders also expressed concerns that the sanctuary could have unintended consequences on dredging and related activities.

In response to public comments on the DEIS and discussions with the state, NOAA proposed to modify the sanctuary boundary (Boundary A) from 1,075 square miles to 962 square miles in the FEIS and adopted the low water datum (LWD) rather than the ordinary high water mark as the

sanctuary's landward/western boundary in the FEIS. The LWD is more lakeward than the OHWM, thereby excluding a greater portion of the shoreline from the sanctuary. Corresponding changes were made in the final rule that establishes the sanctuary designation.

This modified Preferred Alternative includes 36 known shipwrecks and the potential for approximately 60 new sites to be discovered. This modification moves the southern sanctuary boundary northward to approximately 650 feet south of the shipwreck *Northerner*, putting the boundary closer to the nominating community of Port Washington and using a known shipwreck site to demarcate the sanctuary boundary, rather than a political boundary (i.e. a county or city line). Responding to interest from Kewaunee County, it also moves the northern boundary approximately 1.7 miles northward of the county line to include the shipwreck *America*.

In response to comments raised by the commercial shipping industry, NOAA will also exclude the ports, harbors, and marinas of Port Washington, Sheboygan, Manitowoc, and Two Rivers. NOAA also removed all federally authorized navigation channels from the sanctuary boundary in this modified preferred alternative.

In the FEIS, NOAA clarified that it will take time to install moorings at all shipwrecks sites, and that some sites (particularly deep sites) create challenges for ideal mooring systems. In the FEIS NOAA indicated that it would delay implementation of the no-anchoring prohibition for two years after the effective date of the proposed rule. In the final rule NOAA is clarifying that the delay in the implementation of the no-anchoring prohibition will be until October 1, 2023, to provide the public with more certainty around the effective date of the prohibitions. During this period, NOAA will work with the state, Sanctuary Advisory Council, a diver working group, and other relevant stakeholders to develop an implementation plan for moorings and a set of best management practices.

In the proposed rule and DEIS, NOAA referred to the proposed sanctuary as the “Wisconsin - Lake Michigan National Marine Sanctuary.” However, based on comments received from the public and community partners, NOAA changes the sanctuary name in the FEIS and final rule to Wisconsin Shipwreck Coast National Marine Sanctuary, which better describes the purpose of the sanctuary, and, as indicated by local communities, provides stronger opportunities for marketing and branding.

#### **IV. ENVIRONMENTALLY PREFERABLE ALTERNATIVE**

The analysis of environmental consequences of each of the alternatives showed that all the action alternatives would benefit the human environment because they would protect and preserve historical and cultural resources, such as shipwrecks. Alternatives 3 and 4 would protect and preserve the greatest number of historical and cultural resources, as compared to the other alternatives. Under Alternatives 2 and 4, NOAA would implement a prohibition on the use of grappling hooks and other anchoring devices on all shipwreck sites, whereas Alternatives 1 and 3 would only prohibit grappling hooks and other anchoring devices when there is a mooring buoy present. Nonetheless, the prohibition on damaging underwater cultural resources (defined as “injury” under the regulations) would apply to all shipwrecks in the proposed sanctuary. Based on this protection that would prohibit any damage to underwater cultural resources, NOAA

determined that all of the action alternatives (alternatives 1, 2, 3, and 4) would result in significant beneficial impacts on underwater cultural resources.

Based on the larger boundary size and the more protective regulations, Alternative 4 would provide the greatest benefit to the human environment. All the alternatives would result in negligible adverse impacts to the human environment primarily due to minor disturbances from vessel operations and potential disturbances to the lake bed during installation and maintenance of mooring buoys. The type and intensity of activities that would result in negligible adverse impacts would be the same for Alternatives 1 through 4. Nonetheless, the adverse impacts from all alternatives would be negligible. Therefore, Alternative 4 is the environmentally preferable alternative.

## **V. RATIONALE FOR SELECTION OF THE PREFERRED ALTERNATIVE**

Alternative 2 is NOAA's Preferred Alternative, which includes Boundary A (962 square miles), Regulatory Option B, and implementation of the final management plan and associated field operations. Overall, Alternative 2 encompasses a smaller boundary that provides protection to slightly fewer shipwrecks, but provides more protective anchoring regulations. NOAA selects the Preferred Alternative because it meets the purpose and need for the proposed action to fulfill the statutory mission and responsibilities of the National Marine Sanctuaries Act, while giving consideration to economic, environmental, technical, and other factors, including minimizing user conflicts. The Preferred Alternative sanctuary boundary is consistent with the nomination put forth by the state and coastal communities, and the proposed regulations reflect significant input from the state of Wisconsin. It is also responsive to public comments throughout the sanctuary nomination and designation process, complements and strengthens current state regulations and permitting, and offers a proactive approach to reducing damage to sanctuary sites.

In selecting Alternative 2 as the Preferred Alternative, NOAA has adopted all practicable means to avoid or minimize environmental harm, including implementing regulatory prohibitions, a future mooring buoy program, and permitting system that would help ensure sustainable diving practices to avoid or minimize any direct impacts to the shipwrecks. Similarly, education and outreach efforts as part of the sanctuary management plan implementation would help promote responsible use of the sanctuary and increase public appreciation and stewardship of these resources. The FEIS did not identify any specific mitigation measures for the proposed action and therefore, a mitigation monitoring plan is not required. Information regarding additional regulatory consultations is included in the FEIS and final rule for the WSCNMS.

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Date