

RECORD OF DECISION
for the
FINAL ENVIRONMENTAL IMPACT STATEMENT
on the
Designation of the Lake Ontario
National Marine Sanctuary

National Oceanic and Atmospheric Administration
Office of National Marine Sanctuaries

June 2024

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) published on April 19, 2023 for the Lake Ontario National Marine Sanctuary Designation. This ROD includes a description of what the decision was, descriptions of all alternatives considered, a description of the environmentally preferable alternative, and a discussion of factors and considerations balanced by NOAA in making its decision.

This ROD is issued pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR Parts 1500-1508 ("CEQ regulations"), and NOAA's procedures for implementing NEPA set forth in NOAA Administrative Order (NAO) 216-6A and the NOAA NEPA Companion Manual.

NOAA prepared the FEIS and ROD for this action using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the 2020 CEQ regulations may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began on April 17, 2019 when NOAA began the sanctuary designation process for the proposed Lake Ontario National Marine Sanctuary by publishing of a notice of intent ([84 FR 16004](https://www.federalregister.gov/documents/2019/04/17/2019-08144/notice-of-intent-to-designate-the-lake-ontario-national-marine-sanctuary), April 17, 2019) to prepare a draft environmental impact statement (DEIS) and to initiate the public scoping process as required by the National Marine Sanctuaries Act (NMSA) and NEPA. As such, NOAA decided to proceed with this NEPA review under the 1978 regulations.

II. Decision

This ROD documents NOAA's decision to designate Lake Ontario National Marine Sanctuary (NMS, or sanctuary). NOAA is selecting the Preferred Alternative (Alternative 2, see below) to designate the Lake Ontario NMS in eastern Lake Ontario to recognize the national significance of the area's historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The area encompasses 1,300 nmi² (1,722 mi²) of eastern Lake Ontario waters and borders Wayne, Cayuga, Oswego, and Jefferson counties. NOAA will co-manage Lake Ontario NMS with New York State. This decision is based on the analyses in the published FEIS, as described below.

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 and the use of tethered underwater mobile systems at shipwreck sites. NOAA will postpone the effective date of the regulation prohibiting grappling into or anchoring on shipwreck sites for two years after the effective date of the final rule, to provide NOAA with adequate time to develop a shipwreck mooring program and plan. This decision is based on the analyses in the FEIS and sanctuary designation documents, as described in detail below.

III. Alternatives Considered

In the FEIS, NOAA considered three alternatives. The alternatives considered included a No Action Alternative and two action alternatives. The two action alternatives included three components: (1) a boundary component, (2) a regulatory component, and (3) a management plan component. NOAA is proposing the same regulations and management plan to manage the sanctuary under both alternatives 1 and 2. NOAA considered two possible boundaries for the proposed sanctuary. Alternative 1's boundary encompasses a portion of eastern Lake Ontario and a segment of the Thousand Islands region of the St. Lawrence River, while Alternative 2 only encompasses the same portion of eastern Lake Ontario. The same proposed management plan and regulations would apply to both alternatives. NOAA's preferred alternative is Alternative 2.

No Action Alternative

Under the No Action Alternative, NOAA would not move forward with the designation of the Lake Ontario National Marine Sanctuary.

Action Alternatives

Under Alternative 1, the proposed sanctuary boundary would include 1,786 square miles in eastern Lake Ontario and the Thousands Islands region of the St. Lawrence River. More specifically, the sanctuary would incorporate 1,724 square miles of eastern Lake Ontario waters and 62 square miles of the St. Lawrence River from the mouth of the river to Chippewa Bay. The sanctuary would border the counties of Wayne, Cayuga, Oswego, and Jefferson and a portion of St. Lawrence County (Figure 1 below, or Figure E.1 in the FEIS). Alternative 1 would include a total of one known aircraft and 63 known shipwrecks, including one shipwreck (*St. Peter*) listed on the National Register of Historic Places and another listed as a New York State Submerged Cultural Preserve and Dive Site (*David W. Mills*). Additional underwater cultural and historical resources that may be within the boundaries include approximately 19 potential shipwreck sites (shipwrecks may exist, but additional research is needed to verify and describe these shipwrecks); three aircraft; and several other archaeological sites, including remnants of piers, aids to navigation, historic middens, and historic properties that may be of religious and cultural significance to Indigenous nations and tribes (also discussed further in the FEIS).

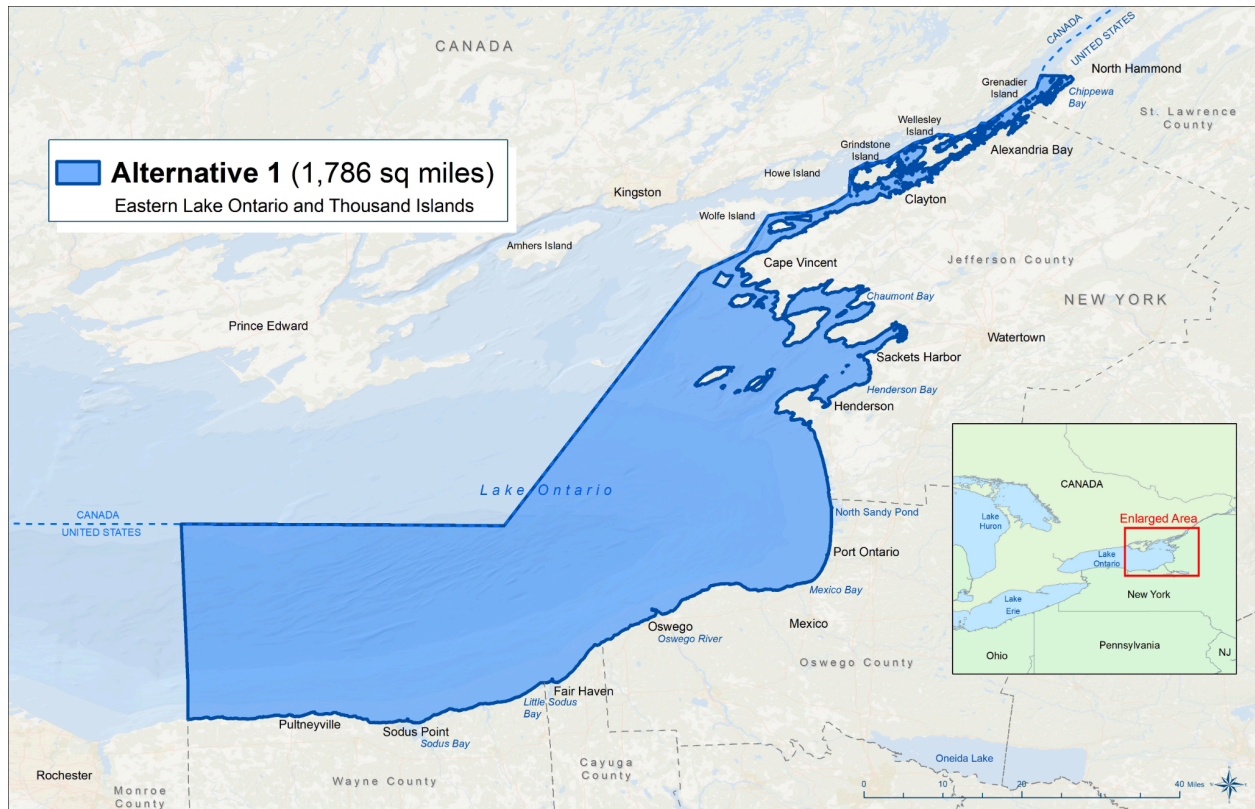


Figure 1. Geographic boundary of Alternative 1. Image: NOAA

Under Alternative 2, the proposed sanctuary boundary would include 1,722 square miles of eastern Lake Ontario. This area includes the same underwater cultural and historical resources included in Alternative 1 in the eastern Lake Ontario segment but would not include underwater cultural and historical resources in the St. Lawrence River (Figure 2 below, or Figure E.2 in the FEIS). Alternative 2 would include a total of one known aircraft and 41 known shipwrecks, including one shipwreck (*St. Peter*) listed on the NRHP and another listed as a New York State Submerged Cultural Preserve and Dive Site (*David W. Mills*). Additional underwater cultural and historical resources that may be within the boundaries include approximately 19 potential shipwreck sites (shipwrecks may exist, but additional research is needed to verify and describe these shipwrecks); three aircraft; and several other underwater archaeological sites, including remnants of piers, aids to navigation, historic middens, and historic properties that may be of religious and cultural significance to Indigenous nations and tribes. NOAA's preferred alternative is Alternative 2.

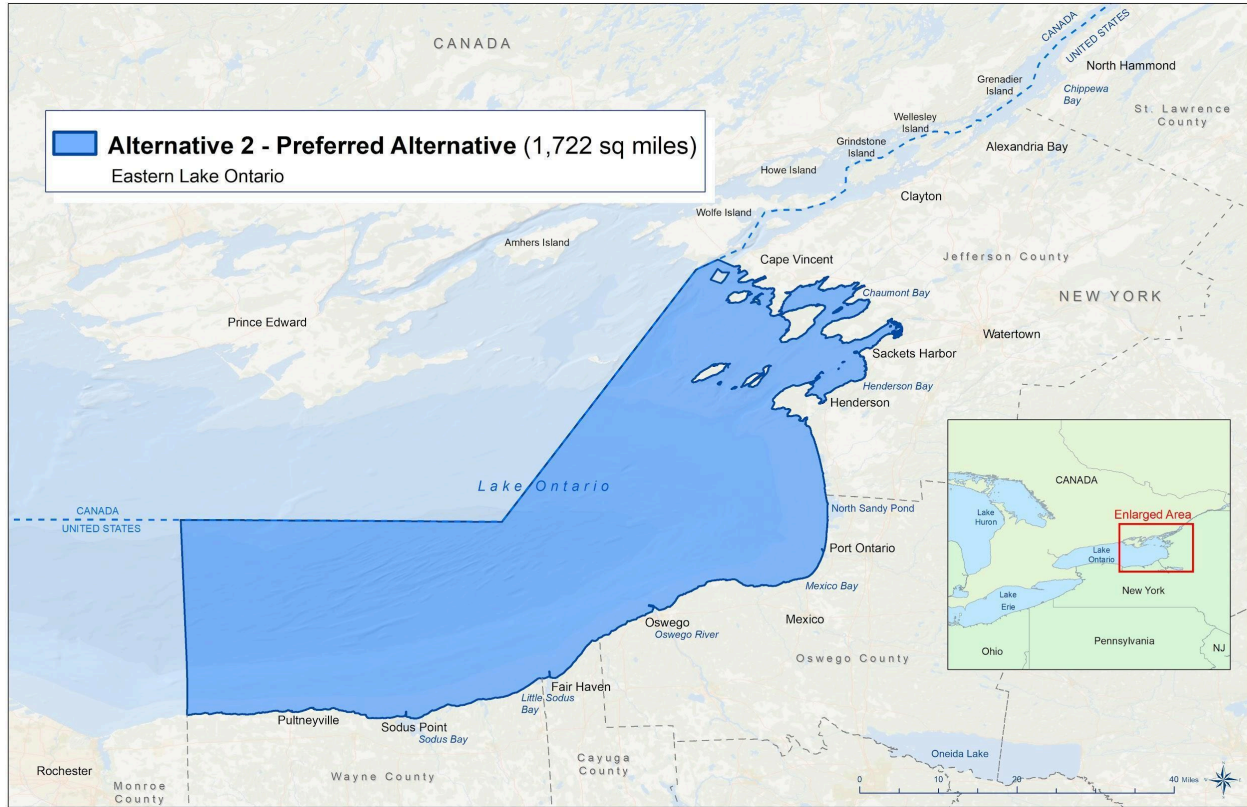


Figure 2. Geographic boundary of Alternative 2 (Preferred Alternative). Image: NOAA

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

For both 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.

Environmental Impacts of the Alternatives

NOAA's analysis of the potential environmental impacts of each alternative in the FEIS concludes that there would be no significant adverse impacts to biological and physical resources, cultural and historic resources, marine area use, recreation, or socioeconomics under any alternative. NOAA anticipates significant long-term beneficial impacts if the proposed action is implemented.

IV. Environmentally Preferable Alternative(s)

NOAA's analysis finds that implementing either alternative 1 or 2 would have **significant** beneficial impacts on underwater cultural and historical resources due to the direct and permanent protections to these historically significant resources that would be provided by implementing regulations to prohibit harm or injury to shipwrecks, conducting research and monitoring activities to inform long-term management, and enhancing stewardship through outreach initiatives. While Alternative 2 would not protect as many historical and cultural resources, both action alternatives would protect a substantial number of nationally significant shipwrecks. Under Alternative 2, the beneficial impacts on underwater cultural and historical resources would be smaller than under Alternative 1 because NOAA would focus research and monitoring activities on fewer underwater cultural and historical resources. Research on fewer sites would mean a smaller amount of new archaeological information available for the research community and the public compared to Alternative 1, a smaller number of shipwreck sites within recreational and technical diving limits, and a narrower scope of interpretive activities due to the smaller geographic scope of the proposed sanctuary.

Implementing either Alternative 1 or Alternative 2 would bring resources and national visibility to provide coordinated promotion of regional recreational activities and human uses within the designated sanctuary area, compared to the No Action alternative. NOAA's analysis finds that the beneficial impacts to socioeconomic resources and human uses would be greater under Alternative 1 because the proposed sanctuary would cover a larger geographic area. Under either action alternative, the proposed regulations and management plan objectives would protect underwater cultural and historical resources in the proposed sanctuary. Implementing proposed regulatory provisions to protect underwater cultural and historical resources from disturbance could have minor benefits to physical and biological resources in the action area by reducing the potential for disturbance of the lakebed, shorelines, and any living resources in these areas.

NOAA's analysis finds that implementing the action alternatives would not result in any significant adverse impacts to the human environment. However, designating the proposed sanctuary under Alternative 1 or Alternative 2 could have minor adverse impacts on some resource areas due to increased levels of site visitation associated with increased name recognition of the area through national marine sanctuary designation. The proposed sanctuary designation may also attract more public users to the area, resulting in increased boat traffic. NOAA-led activities to support management of the proposed sanctuary as well as recreational activities, such as vessel operations and maintenance; scuba operations; deployment of AUVs, ROVs, gliders, and drifters; archaeological site investigation; and deployment of equipment on the lakebed (i.e., installing mooring buoys) could cause minor disturbance of underwater cultural and historical resources, the lakebed, and any fish species present in the area. NOAA's analysis finds that any adverse impacts on these resources from implementing Alternative 1 or Alternative 2 would be negligible or minor due to best management practices NOAA would follow during research and other field activities; the mooring program that would limit direct interactions with shipwrecks by recreational divers; regulations to prohibit harm or injury to shipwrecks; and outreach programs that would encourage public stewardship.

Overall, NOAA's analysis finds that implementing either Alternative 1 or Alternative 2 would generally have the same types of beneficial and adverse impacts on the underwater cultural and

historical resources, socioeconomic resources and human uses, and physical and biological resources. Under Alternative 2, these impacts would occur over a smaller geographic area and would be smaller in scope and intensity because fewer underwater cultural and historical resources would be protected under sanctuary regulations. When compared to the either action alternative, NOAA finds that implementing the No Action Alternative would forgo the benefit of implementing regulations and a management plan to provide comprehensive, long-term management of cultural and historical resources located within the proposed sanctuary under either action alternative.

Based on the larger boundary size and the more protective regulations, Alternative 1 would provide the greatest benefit to the human environment. Both 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 and 2. The adverse impacts from both alternatives would be negligible. Nonetheless, Alternative 1 is the environmentally preferable alternative.

V. Rationale for Selection of the Final Preferred Alternative

Alternative 2 is NOAA's Preferred Alternative, which includes 1,722 square miles, implementation of proposed regulations, 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. However, both alternatives would have significant beneficial impacts on underwater cultural and historical resources due to the direct and permanent protections to these historically significant resources that would be provided by implementing regulations to prohibit harm or injury to shipwrecks, conducting research and monitoring activities to inform long-term management, and enhancing stewardship through outreach initiatives.

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 New York. 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 Lake Ontario NMS.

VI. Public Involvement and Additional Regulatory Consultations

On January 17, 2017, leaders of four New York counties (Oswego, Jefferson, Cayuga, and Wayne) and the City of Oswego, with support from the Governor of New York, submitted a nomination to NOAA through the Sanctuary Nomination Process (79 FR 33851) asking NOAA to consider designating a national marine sanctuary in eastern Lake Ontario waters to protect, and increase awareness of, a nationally significant collection of submerged maritime heritage resources; build new partnerships for research and education; and promote tourism and economic development opportunities. NOAA completed its review of the nomination and, on March 21, 2017, added the area to the inventory of nominations eligible for designation.

On April 17, 2019, NOAA began the sanctuary designation process for the Lake Ontario National Marine Sanctuary by publishing a notice of intent (84 FR 16004, April 17, 2019) to prepare a DEIS and to initiate the public scoping process as required by the NMSA and NEPA. The notice of intent also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act.

NOAA established a Sanctuary Advisory Council in 2020 to bring members of the local community together to provide advice to NOAA, to serve as a liaison with the nominating community, and to assist in guiding NOAA through the designation process. The council consists of 15 members in the following seats: citizens-at-large, divers/dive clubs/shipwreck explorers, maritime history, education, tourism, economic development, recreational fishing, and shoreline property owners. In addition, representatives of the four counties, the city of Oswego, the U.S. Coast Guard, the Port of Oswego Authority, New York Sea Grant, and New York State are non-voting members.

In accordance with NEPA (42 U.S.C. 4321 et seq.) and the NMSA (16 U.S.C. 1434), NOAA published a DEIS and draft management plan for the national marine sanctuary designation on July 7, 2021 (86 FR 35757). The DEIS described the purpose and need for the proposed action, identified a range of alternatives, evaluated the environmental consequences of the proposed designation of a national marine sanctuary, and provided an assessment of resources and uses in the area. The DEIS also described proposed regulatory concepts and non-regulatory management actions outlined in the draft management plan to identify the tools employed by NOAA to manage the sanctuary, such as research and monitoring, education and outreach, tourism and economic development, sanctuary resource protection, and sanctuary operations. NOAA did not select a preferred alternative in the DEIS.

During the public comment period on the DEIS and draft management plan, NOAA held four virtual public meetings. NOAA received 87 separate comments either through www.regulations.gov, by mail, or during the virtual public meetings. NOAA also prepared and released a notice of proposed rulemaking (NPRM) for the proposed designation (88 FR 3334, January 19, 2023). NOAA held three in-person and two virtual public meetings. NOAA received 96 comments during the public comment period on the NPRM. All comments on the DEIS and the

NPRM are available at the Regulations.gov website. NOAA's response to the public comments are set forth in Appendix D of the final environmental impact statement.

Information about additional consultations is included in the FEIS.

Nicole R. LeBoeuf
Assistant Administrator
for Ocean Services and Coastal Zone Management
National Ocean Service

Date