

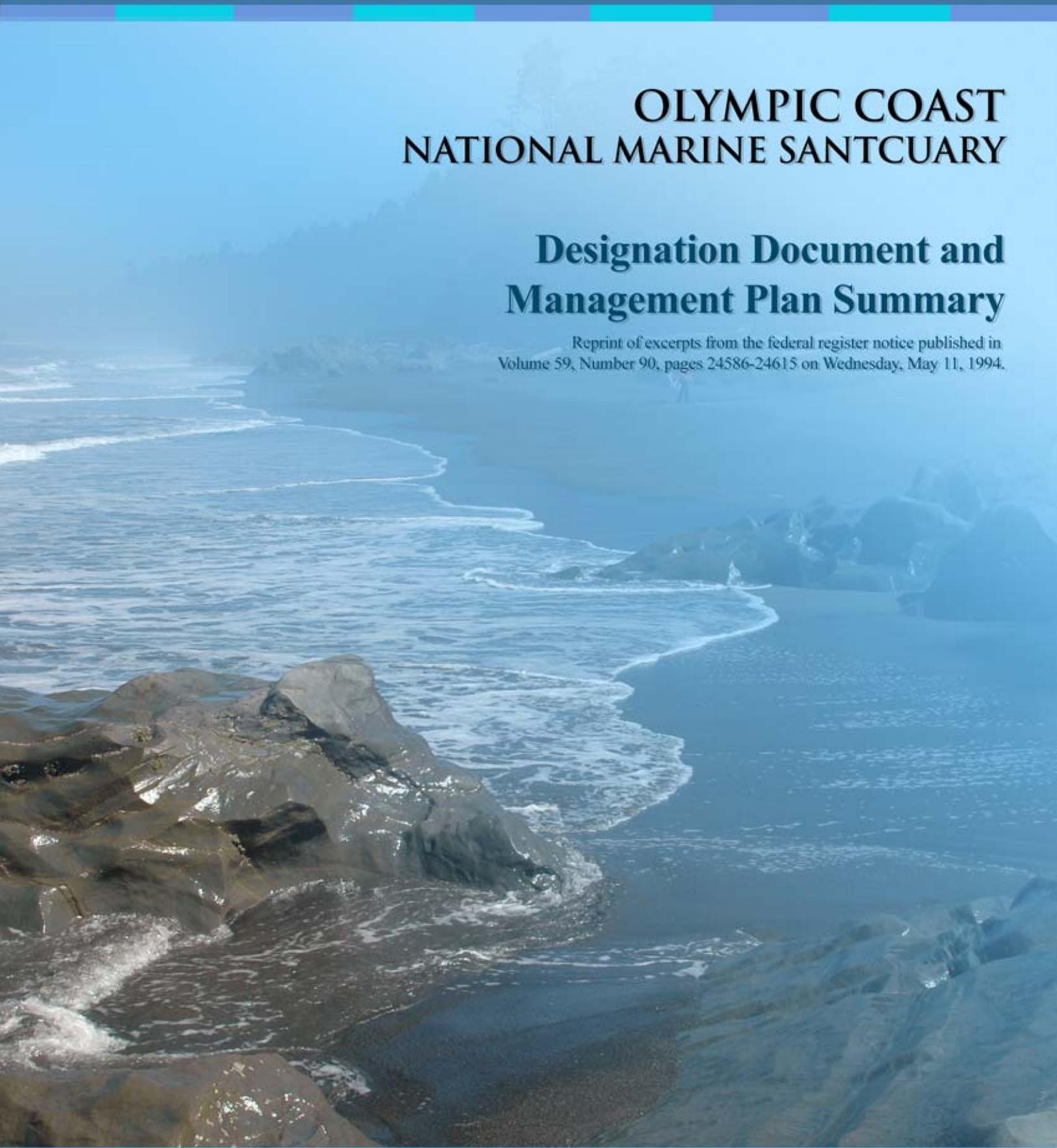
OLYMPIC COAST NATIONAL MARINE SANCTUARY MANAGEMENT PLAN REVIEW



OLYMPIC COAST NATIONAL MARINE SANCTUARY

Designation Document and Management Plan Summary

Reprint of excerpts from the federal register notice published in
Volume 59, Number 90, pages 24586-24615 on Wednesday, May 11, 1994.



OLYMPIC COAST NATIONAL MARINE SANCUARY DESIGNATION
DOCUMENT AND MANAGEMENT PLAN SUMMARY

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ABOUT THIS DOCUMENT

On May 11, 1994 the National Oceanic and Atmospheric Administration (NOAA) published the final Olympic Coast National Marine Sanctuary Regulations (59 FR 24586). This official government document also served as the notice of the Sanctuary's designation, the culmination of long and involved public process. This important document has been reformatted and is republished here with some additional information to clarify the different portions of the document. The content is mostly unchanged with some edits to improve readability and to update changes to sanctuary regulations. This reprint of the designation document is meant to be a companion document to the 2007 Olympic Coast National Marine Sanctuary State of the Sanctuary Report. These two documents are meant to aid the public in commenting on the sanctuary's management plan review process. You can get a copy of the original 1994 document at http://sanctuaries.noaa.gov/management/fr/59_FR_24586.pdf <http://olympiccoast.noaa.gov>.

DESCRIPTION OF THE FEDERAL REGISTER NOTICE (59 FR 24586)

The final regulations of the Olympic Coast National Marine Sanctuary were published in Volume 59, Number 90, pages 24586-24615 on Wednesday, May 11, 1994. The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. It is published by the Office of the Federal Register, National Archives and Records Administration.

In addition to publishing the final Olympic Coast National Marine Sanctuary Regulations, the federal register notice also served the purpose of:

- Notice of National Marine Sanctuary Designation;
- Summary of final Management Plan.
- Publish the Designation Document

BACKGROUND

Section 303 of the National Marine Sanctuaries Act, as amended (the "Act" or "NMSA"), 16 U.S.C. 1433), provides that the Secretary may designate any discrete area of the marine environment as a National Marine Sanctuary if the Secretary determines that such designation will fulfill the purposes and policies of the Act as set forth in section 301(b) (16 U.S.C. 1431(b)) and finds that:

- 1) The area is of special national significance due to its resource or human-use values;

Background on Olympic Coast National Marine Sanctuary Final Regulations

- 2) Existing state and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
- 3) Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and
- 4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

The coastal and ocean waters off the Olympic Coast were recognized for their high natural resource and human use values and placed on the National Marine Sanctuary Program Site Evaluation List (SEL) in August of 1983 (48 FR 35568). In 1988, Congress reauthorized and amended the Act and directed the Secretary to designate the Olympic Coast National Marine Sanctuary (Pub. L. 100-627, section 205(a)). In report language accompanying this legislation, Congress noted that the Olympic Coast possesses a unique and nationally significant collection of flora and fauna, and that adjacency of the area to the Olympic National Park merits the designation of this area as a national marine sanctuary (H. Rep. No. 4210, 100th Cong., 1st. Sess., 1988).

NOAA held four scoping meetings in Washington State April 10-13, 1989, to solicit public comments on the designation: Aberdeen on April 10, Port Angeles on April 11, Forks on April 12, and Seattle on April 13 (45 FR 10398, March 13, 1989).

On September 20, 1991, NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) (56 FR 47836). Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on November 6th in Port Angeles, November 7th in Seattle, November 12th in Olympia, November 13th in Aberdeen, November 14th in Seaview, and November 20th in Washington DC. On November 14th, 1991, the period for submitting public comments was extended from November 27th, 1991 to December 13th, 1991 pursuant to requests from the State of Washington and the coastal counties (56 FR 57869). All comments received by NOAA in response to the Federal Register notice and at the public hearings were considered and, where appropriate, incorporated in the final regulations and FEIS/MP. A summary of the comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow.

The Olympic Coast Sanctuary was dedicated on July 16, 1994

Summary of Final Management Plan

The FEIS/MP for the Olympic Coast National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The FEIS/MP describes the resources and uses of the Sanctuary. The FEIS/MP describes the resource protection, research, education and interpretive programs, and establishes goals and objectives to be accomplished by each program. The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities.

The goals and objectives for the Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of protection efforts are to:

- 1) Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;
- 2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);
- 3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;
- 4) Enforce Sanctuary regulations in addition to other regulations already in place;
- 5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;
- 6) Ensure that the water quality of the coastal and ocean waters off the Olympic Peninsula is maintained at a level consonant with Sanctuary designation;
- 7) Establish mechanisms for coordination among all the agencies participating in Sanctuary management;
- 8) Ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and
- 9) Reduce threats to Sanctuary resources and qualities.

Summary of Final Management Plan

Research Program

Effective management of the Sanctuary requires the implementation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the marine environment off the Olympic peninsula, its resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the marine and upland freshwater environments. Research results will be used in interpretive programs for visitors, for those living on the Peninsula, and working adjacent to or in the Sanctuary, others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives of the research program are to:

- 1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improve management of the Sanctuary;
- 2) Incorporate research results into the interpretive/education program in a format useful for the general public;
- 3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;
- 4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;
- 5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;
- 6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and
- 7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education Program

The goal for the education program is to improve public awareness and understanding of the significance of the Sanctuary resources and qualities to foster a heightened sense of stewardship for Sanctuary resources and qualities.

The management objectives designed to meet this goal are to:

- 1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;
- 2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

Summary of Final Management Plan

- 3) Foster public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and
- 4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to:

- 1) Provide relevant information about Sanctuary regulations, use policies and standards;
- 2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;
- 3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and
- 4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The Sanctuary headquarters will be located in Port Angeles, WA with an initial satellite office near Forks, WA.

Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; set forth procedures for applying for national marine sanctuary permits to conduct prohibited activities; set forth certification procedures for existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity; set forth notification and review procedures for applications for licenses, permits, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and set forth procedures for administrative appeals.

The regulations are codified in part 925 of title 15, Code of Federal Regulations.

Section 925.1 sets forth as the purpose of the regulations to implement the designation of the Olympic Coast National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 925.2 and Appendix A following Sec. 925.12 set forth the boundary of the Sanctuary.

Section 925.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the NMSA.

Section 925.4 allows all activities except those prohibited by Sec. 925.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to Sec. 925.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by Section 312 of the Act.

Section 925.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for:

- (1) The exploration for, development or production of oil, gas or minerals in the Sanctuary;
- (2) The discharge of primary-treated sewage within the Sanctuary (except pursuant to certification under Sec. 925.10, of a valid authorization in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction);
- (3) The disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; and
- (4) Bombing activities within the Sanctuary could be conducted lawfully if:
 - (1) The activity is necessary to respond to an emergency threatening life, property, or the environment (not applicable to the prohibitions against takings and interference with law enforcement); necessary for valid law enforcement purposes; authorized by a National Marine Sanctuary permit

Summary of Olympic Coast National Marine Sanctuary Regulations

issued under Sec. 925.9 (not applicable to the prohibition against interference with law enforcement); or authorized by a Special Use Permit issued under Section 310 of the Act (not applicable to the prohibition against interference with law enforcement);

- (2) With regard to Department of Defense activities: (A) the activity is an existing military activity including hull integrity tests and other deep water tests; live firing of guns, missiles, torpedoes, and chaff; activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and anti- submarine warfare operations, or (B) the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by prohibiting all bombing activities within the Sanctuary;
- (3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management or designee under Sec. 924.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated, except that treaty rights of a Federally recognized Indian tribe may be exercised by the tribe without certification by the Director or designee;
- (4) The activity is authorized by a valid lease, permit, license, or other authorization issued by any Federal, State or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management or designee was notified of the application in accordance with the requirements of Sec. 925.11, the applicant complies with the requirements of Sec. 925.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

Summary of Olympic Coast National Marine Sanctuary Regulations

The first activity prohibited is exploring for, developing or producing oil, gas or minerals within the Sanctuary. With regard to oil and gas, this regulation implements the requirements of Section 2207 of the Oceans Act of 1992 which prohibits "oil or gas leasing or pre-leasing activity [from being] conducted within the area designated as the Olympic Coast National Marine Sanctuary * * *." The resources and qualities of the coastal and offshore waters of the Olympic Peninsula, particularly the sea birds and pinnipeds that use the haul-out sites, kelp forests and rocks along the Olympic Coast, and the high water quality of the area, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas exploration, development and production activities within the Sanctuary boundary partially protects Sanctuary resources and qualities from oil and gas activities. Only partial protection will be provided due to the remaining threat from oil and gas from vessel traffic transiting through and near the Sanctuary, particularly oil tankers not operating in accordance with the voluntary agreement of the Western States Petroleum Association to remain 50 nautical miles from shore. A prohibition on mineral activities within the Sanctuary is consistent with the prohibition on alteration of or construction on the seabed as discussed below. "Mineral" is defined to mean clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore, or any other solid material or other solid matter of commercial value. The prohibition on oil, gas and mineral activities additionally will prevent the negative effects of physical and possible chemical disturbances associated with extraction activities, e.g., destruction of benthic biota; resuspension of fine sediments; interference with filtering, feeding and respiratory functions of marine organisms; loss of food sources and habitats; and lowered photosynthesis and oxygen levels.

The second activity prohibited is depositing or discharging from within the boundary of the Sanctuary any material or other matter except:

- (1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;
- (2) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322 et seq.;
- (3) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by Section 312 of the FWPCA) excluding oily-wastes from bilge pumping;
- (4) Engine exhaust; and
- (5) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

This prohibition is necessary to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of Sec. 925.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required. The intent of this prohibition is to protect Sanctuary resources and qualities from the effects of land and sea originating pollutants.

Summary of Olympic Coast National Marine Sanctuary Regulations

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the five exclusions discussed above for the second prohibited activity.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

Historical resources located within the Sanctuary that are of significance to an Indian tribe(s) (e.g., submerged Indian villages) will be managed so as to protect other Sanctuary resources and the interests of the governing body of an Indian tribe(s) in such historical resources. If an Indian tribe determines that a historical resource of tribal significance may be researched, excavated or salvaged, the Sanctuary manager may issue a Sanctuary permit if the criteria for issuance have been met (See Sec. 925.9). Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains.

The fifth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except if any of the above results incidentally from: (1) Anchoring vessels; (2) traditional fishing operations; (3) installation of navigation aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and harbors, and repair, replacement or rehabilitation of breakwaters and jetties; (5) construction, repair, replacement, enhancement or rehabilitation of boat launches, docks or piers and associated breakwaters and jetties; or (6) beach nourishment projects related to harbor maintenance activities. Federal projects are any water resources development projects conducted by the U.S. Army Corps of Engineers or operating under a permit or authorization issued by the Corps of Engineers and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, such as kelp beds, invertebrate populations, fish habitats and estuaries.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds in or above the Sanctuary, except as authorized by NMFS or USFWS under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or pursuant to a treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

Summary of Olympic Coast National Marine Sanctuary Regulations

The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those acts. The prohibition overlaps with the MMPA, ESA and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to \$100,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary. The prohibition recognizes existing treaty rights to hunt marine mammals, sea turtles and seabirds to the extent that the treaty rights have not been abrogated by provisions of the MMPA, ESA or MBTA.

The seventh activity prohibited is flying motorized aircraft at less than 2,000 feet (610m) both above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles or Copalis National Wildlife Refuge, or within one nautical mile seaward of the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe. This prohibition is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, and colonial seabirds along the shoreline margins of the Sanctuary.

Both the eighth and ninth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The eighth prohibition is the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the MMPA, ESA and MBTA and the ninth prohibition is interfering with, obstructing, delaying or preventing investigations, searches, seizures or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 925.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 925.7 sets for the maximum statutory civil penalty for violating a regulation--\$100,000. Each day of a continuing violation constitutes a separate violation. Section 925.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to draw the public's attention to the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear in 15 CFR part 904.

Summary of Olympic Coast National Marine Sanctuary Regulations

Section 925.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will not substantially injure Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe. In deciding whether to issue a permit, the Director or designee may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, the end value of the activity, and the impacts of the activity on adjacent Indian tribes. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 925.10 sets forth procedures for requesting certification of leases, licenses, permits, other authorizations, or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a)(2)-(8) of Sec. 925.5. Pursuant to paragraph (f) of Sec. 925.5, the prohibitions in paragraphs (a)(2)-(8) of Sec. 925.5 do not apply to any activity authorized by a valid lease, permit, license, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of Sec. 925.10 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 925.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of the prohibitions in paragraphs (a)(2)-(8) of Sec. 925.5 with regard to which the holder is requesting certification pending final agency action on his or her certification request, provided the holder has complied with all requirements of Sec. 925.10.

Section 925.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, other authorization or right as she or he deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of

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the Act. The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in Sec. 925.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, other authorization or right is subject to the provisions of Sec. 925.11.

Section 925.11 states that consistent with paragraph (g) of Sec. 925.5, the prohibitions of paragraphs (a)(2)-(8) of Sec. 925.5 do not apply to any activity authorized by any valid lease, permit, license, or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of Sec. 925.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Where the applicant is the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and the U.S. trust responsibility to the affected tribes.

Section 925.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of Sec. 925.11.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in Sec. 925.12.

Section 925.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to:

- (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under Sec. 925.9 or a Special Use permit under Section 310 of the Act;
- (2) The granting, denial, conditioning, amendment, suspension or revocation of a certification under Sec. 925.10; or
- (3) The objection to issuance or the imposition of terms and conditions under Sec. 925.11.

Prior to conditioning the exercise of existing leases, permits, licenses, other authorizations or rights or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants.

NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

Summary of Olympic Coast National Marine Sanctuary Regulations

Section 925.13 has been added which requires the Director to consult with state, local and tribal governments regarding areas of mutual concern, including Sanctuary programs, permitting activities, development and threats to Sanctuary resources. This section also requires the Director to enter into memorandums of understanding with such governments when requested regarding such consultations.

Designation Document for the Olympic Coast National Marine Sanctuary

Under the authority of Title III of the National Marine Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 et seq., the waters off the Olympic Coast of Washington State including the U.S. portion of the Strait of Juan de Fuca west of Koitlah Point, and the submerged lands thereunder, as described in Article II, are hereby designated as the Olympic Coast National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Olympic Coast National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities that either will be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if an activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Sanctuary Area

The Olympic Coast National Marine Sanctuary boundary encompasses approximately 2500 square nautical miles (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington. The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the Copalis River, cutting across the heads of Nitnat, Juan de Fuca, and Quinault Canyons.

The shoreward boundary of the Sanctuary is the mean lower low water line when adjacent to Indian reservations and State and county lands. When adjacent to Federally managed lands, the coastal boundary extends to the mean higher high water line. The coastal boundary cuts across the mouths of all rivers and streams. The precise boundary of the Sanctuary is set forth in Appendix A of this Designation Document.

Article III. Characteristics of the Sanctuary Area That Give It Particular Value

The Sanctuary is a highly productive, nearly pristine ocean and coastal environment that is important to the continued survival of several ecologically and commercially important species of fish, seabirds, and marine mammals. Its rugged and undeveloped coastline makes the region one of the more dramatic natural wonders of the coastal United States, paralleling the majestic splendor of such terrestrial counterparts as Yosemite National Park and the Grand Tetons. The region's high biological productivity is fueled by seasonal enhanced upwelling along the edge of the continental shelf, especially at submarine canyons, during periods of high solar radiation.

The diversity of habitats that make up the Sanctuary support a great variety of biological communities. This unusually large range of habitat types include: Offshore islands and rocks; some of the most diverse kelp beds in the world; intertidal pools; erosional features such as rocky headlands, seastacks, and arches; interspersed exposed beaches and protected bays; submarine canyons and ridges; the continental shelf, including a broad shallow plateau extending from the mouth of the Juan de Fuca canyon; and continental slope environments. The numerous seastacks and rocky outcrops along the Sanctuary shoreline, coupled with a large tidal range and wave splash zone, support some of the most diverse and complex intertidal zones in the United States.

The Sanctuary provides an essential habitat for a wide variety of marine mammals and birds, and is of particular interest due to the presence of endangered and threatened species that live or migrate through the region. Twenty seven species of marine mammals are reported to breed, rest within, or migrate offshore of the Olympic Peninsula. Of particular interest is the migration route of the endangered California gray whale, the threatened northern sea lion, the occasional presence of the endangered right, fin, sei, blue, humpback, and sperm whales, and the reintroduced resident population of sea otters.

In addition, the seabird colonies of Washington's outer coast are among the largest in the continental United States and include a number of species listed as endangered or threatened including the short-tailed albatross, peregrine falcon, brown pelican, Aleutian Canada goose, marbled murrelet, and one of the largest populations of bald eagles in the continental United States.

The high biological productivity of the coastal and offshore waters in the Sanctuary support valuable fisheries that contribute significantly to the State and tribal economies. The commercially important species of fish include five species of salmon, groundfish, and shellfish.

In addition to the Sanctuary's value with respect to its biological resources, the region encompasses significant historical resources including Indian village sites, ancient canoe runs, petroglyphs, Indian artifacts, and numerous shipwrecks.

The diversity and richness of marine resources suggests that the marine sanctuary designations will provide exceptional opportunities for scientific research in the areas of species interactions, population dynamics, physiological ecology, linkages between terrestrial and aquatic ecosystems, and marine anthropology. The scientific research

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encouraged by the Sanctuary management plan will, in turn, help support an intensive public education and awareness program that will address the diverse, complex, and sensitive ecosystems in Washington's coastal and oceanic environments.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area:

- a. Exploring for, developing, or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other solid matter of commercial value) within the Sanctuary;
- b. Discharging or depositing from within the boundary of the Sanctuary, any material or other matter;
- c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter;
- d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;
- e. Drilling into, dredging, or otherwise altering the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material or other matter on the seabed of the Sanctuary;
- f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;
- g. Flying a motorized aircraft above the Sanctuary;
- h. Operating a vessel (i.e., watercraft of any description in the Sanctuary);
- i. Interfacing with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use of access, may be terminated by the Secretary of Commerce or designee as a result of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) Exploration for, development or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary treated sewage (except for regulation, pursuant to section 304(c)(2) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); (3) the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or (4) bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of This Designation

The terms of designation, as defined under Section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and the Governor of the State of Washington, and approval by the Secretary of Commerce or designee.

Excerpts from the Comments and Responses

This section has been edited to include only some of the more substantive comments and responses. It is meant to inform the public on how NOAA viewed key issues at the time of the 1994 designation. Refer to the original document for a complete list of all comments and responses.

Issue: Boundaries

Boundary Alternative 4

Comment: NOAA should select boundary alternative 4 as the preferred alternative because:

- 1) Many of the unique unspoiled ecological resources that might be significantly impacted by oil are located in the physically complex area north of Pt. Grenville including areas of submarine canyons, productive fishing grounds, and coastal features that are critical habitat;
- 2) Sanctuary status in the southern portion of the study area would conflict with state managed activities such as dredged material disposal, while most of the shoreline in the north has little commercial activity; and
- 3) NOAA can enlarge the boundary in the future.

Response: NOAA agrees. One of the most valuable qualities of the Olympic Peninsula is that it is undeveloped and relatively pristine. NOAA recognizes that the southern portion of the boundary is much more developed, especially with respect to the harbor maintenance activities in Grays Harbor. Further, the rocky intertidal habitats in the north are much more sensitive to pollution from oil and gas compared to the sandy beach environments in the southern portion of the study area. In the event of a spill of hazardous materials, experts predict that it would take years for intertidal communities of rocky intertidal environments to become reestablished, whereas it would take an order of months for the sandy intertidal communities to recolonize. Lastly, NOAA can expand Sanctuary boundary 4 in the future, in accordance with the requirements of the National Marine Sanctuaries Act (NMSA), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA), if deemed necessary.

Modification of the Shoreline Boundary

Comment: The shoreline boundary should be established at the lower low water mark to preclude interference with carefully crafted beach management plans regulating beach traffic, razor clam harvests and emergency aircraft landings.

Response: The shoreline boundary of the Sanctuary is located at the higher high water line where adjacent to Federally-owned land (including the Olympic National Park and the U.S. Fish and Wildlife refuges) and the lower low line mark when adjacent to State-owned land. Thus, the boundary does not interfere with beach management plans. Razor clam harvests within the intertidal zone of the Sanctuary will be managed by existing authorities such as the Washington State Department of Natural Resources, the Quinault

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Indian Tribe, and the National Park Service. Emergency aircraft landings are permissible in the Sanctuary.

Comment: Clarify why the shoreward boundary distinguishes between adjacency to tribal and non-tribal lands.

Response: The Tribes have jurisdiction to the mean lower low water line. Both the Tribes and the State have requested that the Sanctuary boundary not overlap with tribal and State lands. Therefore, the coastal boundary has been modified so that it is at mean lower low water when adjacent to tribal and State owned lands and at mean higher high water when adjacent to Federally owned lands.

Comment: Existing National Park Service standards, regulations, and policies must not be diminished as a result of dual designation as a National Park and National Marine Sanctuary. The majority of the intertidal areas of the Olympic National Park are Federally designated Wilderness Area and must be managed accordingly.

Response: The Sanctuary boundary overlaps with the boundary of the Olympic National Park. NOAA will not diminish the standards, regulations and policies currently applying to the intertidal areas of the Olympic National Park. The existing standards, regulations and policies of the intertidal areas will remain. NOAA will enhance the protection of these intertidal areas by working with the Coast Guard to ensure a safer vessel traffic environment, and the upland users of the watershed to monitor and minimize the impacts of non-point source pollution. Additionally, NOAA will support research and resource monitoring initiatives in the intertidal areas and may seek compensation for damages if an accident were to occur that injures Sanctuary resources.

Issue: Alteration of/or Construction on the Seabed

Comment: The regulation pertaining to alteration or construction of the seabed may be interpreted as prohibiting such activities as geologic research, the placement of current meters, sediment traps and similar research equipment, all of which might be necessary if environmental studies were to be conducted in the Mineral Management Service (MMS) Washington-Oregon planning area. To clarify the intent of this prohibition, "Government sponsored environmental studies" should be added in the second sentence of this section as one of the activities for which this prohibition does not apply.

Response: NOAA supports research within the Sanctuary. However, the prohibition on alteration of, or construction on the seabed applies to all research activities, including those conducted by governmental agencies. All research activities conducted within the Sanctuary that violate a Sanctuary regulation must be undertaken pursuant to a Sanctuary research permit to ensure that the impacts from the research are minimal and temporary.

Comment: The prohibition on the alteration of, or construction on the seabed should not interfere with current or future harbor maintenance or fishing activities including: (1) Jetty and groin construction; (2) permitted dredging of channels and harbors; (3) the use

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of dredge spoils for underwater berm construction; (4) construction and improvement of boat launching and marine facilities adjacent to reservations; (5) the retrieval of fishing gear (including crab pots) and sunken vessels; (6) bottom trawling and scallop dredging; and (7) tribal fin and shellfish operations. NOAA needs to clarify the exemption of activities incidental to routine fishing and vessel operations. The exemptions for harbor maintenance and fishing activities should read: "attempting to alter the seabed for any purpose other than anchoring vessels, normal fishing operations to include commercial bottom trawling and crab pot recovery, and routine harbor maintenance."

Response: Ports and harbors are not included within the boundary of the Sanctuary. The boundary of the Sanctuary adjacent to the Port of La Push is congruent with the Colreg lines at the mouth of the harbors. Further, there is the following exception to the alteration-of-the-seabed regulation: "Harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties." The noted activities incidental to fishing have been exempted from the Sanctuary regulations.

Comment: NOAA should prohibit all dredging and removal of sand and gravel within the Sanctuary boundary.

Response: NOAA has prohibited all dredging and removal of sand and gravel within the Sanctuary boundary except as an incidental result of harbor maintenance activities. These activities threaten the integrity of the benthic community and the food source of many fish, marine mammals and seabirds.

Comment: NOAA should not subject the exploration and development of offshore mineral activities to the same restrictions proposed for the exploration and development of Outer Continental Shelf (OCS) oil and gas.

Response: All of these activities injure the benthic communities in the Sanctuary and NOAA does not believe that there is cause for exceptions.

Issue: Cultural and Historic Resources

Comment: NOAA should prohibit moving, injuring, or possessing historic resources within the Sanctuary.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. NOAA has included a prohibition on moving, removing, possessing, injuring, or attempting to move, remove, or injure these resources, except as resulting incidentally from traditional fishing operations. If NOAA determines that fishing activities are resulting in injury to Sanctuary historic and cultural resources, NOAA may amend the Sanctuary regulations to abolish the exemption for these activities.

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Comment: The proposed regulations dealing with cultural resources fail to preserve the tribes' ability to control access to, and removal of, their cultural heritage. Therefore, NOAA should add a new Sec. 925.5(a)(8) prohibiting: "removal or attempted removal of any Indian cultural resource or artifact, or entry onto a significant cultural site designated by a tribal governing body with the concurrence of the Director, except with the express written consent of the governing body of the tribe or tribes to which such resource, artifact, or cultural site pertains." NOAA should pursue a cooperative agreement with the tribes to coordinate management of cultural artifacts of tribal significance.

Response: The NMSA provides NOAA with the authority to control access to cultural artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historic resource must apply for and obtain a sanctuary permit from NOAA. NOAA acknowledges the interest of the coastal tribes in preserving their cultural heritage and, in particular, those cultural artifacts of tribal significance found within the Sanctuary. NOAA considers its objective of preserving the historical and cultural resources of the Sanctuary to be compatible with the coastal tribes' desire to preserve their cultural heritage. Therefore, NOAA has modified Sec. 925.9(j) to state: "The Director or designee shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe." NOAA has also added Sec. 925.9(k) which states: "removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry into a significant cultural site designated by a tribal governing body, the Director shall acquire the express written consent of the governing body of the tribe or tribes to which such cultural site pertains." NOAA will enter into a cooperative agreement with the tribes and the State of Washington that clarifies the process by which permits will be granted to conduct research or salvage operations on historical and cultural resources of tribal significance.

Comment: The regulation as proposed in the DEIS/MP is duplicative of State law. There already exists state and Federal antiquities acts to protect coastal archeological and historical sites that occur on or near the median high tide boundary. The State archeologist already coordinates archeological matters.

Response: The NMSA is not duplicative of existing laws protecting historical and cultural resources. The NMSA is more comprehensive in that it provides enforcement authority, including civil penalties, for the destruction or injury of historical and cultural resources.

The Abandoned Shipwreck Act of 1987 gives states the title to certain abandoned shipwrecks in state waters. Under the NMSA, NOAA has trustee responsibilities for abandoned shipwrecks and other historical and cultural resources within national marine sanctuaries, including those located in state waters, for the purpose of protecting them.

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NOAA will coordinate with State agencies to ensure that historical and cultural resources within the Sanctuary are protected, and that the policies affecting historical and cultural resources in State waters are consonant with the policies in the Federal waters of the Sanctuary.

Issue: Discharges

Ocean Dumping

Comment: NOAA should not prohibit the use of dredged material disposal sites off Grays Harbor, Willapa Bay, the Columbia River, or on the north jetty and breakwater of the Port of La Push.

Response: The Sanctuary boundary does not extend south of Copalis Beach and excludes ports and harbors. Therefore, the maintenance activities at La Push and the use of the dredge disposal sites south of the boundary is not prohibited. In addition, the use of dredged spoil within the Sanctuary for beach nourishment in connection with harbor maintenance activities is exempt from the regulatory prohibition.

Comment: No ocean dumping should be allowed in proximity to the major submarine canyons.

Response: The regulations prohibit ocean dumping within the Sanctuary, and outside the Sanctuary if the material enters and injures Sanctuary resources or qualities.

Point Source Discharges

Comment: Prohibit discharges of toxics, plastic, and municipal garbage and sewage into the marine environment.

Response: The dumping of municipal garbage, toxics and plastics is prohibited within the Sanctuary by Sanctuary regulations and by regulations promulgated pursuant to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) and the Marine Plastic Pollution Research and Control Act of 1987, which implements Annex V of MARPOL 73/78 in the U.S. Point source discharges are allowed provided such discharge is certified by NOAA in accordance with Sec. 925.10 or approved by NOAA in accordance with Sec. 925.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of Sec. 925.11. At a minimum, secondary treatment will be required.

Comment: Depositing or discharging from any location within the Sanctuary or from beyond the Sanctuary should be prohibited.

Response: The mandate of the National Marine Sanctuary Program is to facilitate multiple uses that are compatible with resource protection. Depositing or discharging most materials within the boundary of the Sanctuary, or from beyond the boundary of the Sanctuary if such material subsequently enters the Sanctuary and injures Sanctuary

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resources or qualities is prohibited. NOAA will work with EPA, the tribes and the State of Washington to maintain water quality. NOAA may require special terms and conditions, including (but not limited to) improved effluent quality, on EPA permits to ensure Sanctuary resources and qualities are protected.

Non-Point Source Discharges

Comment: It should be stated that there is no intent to regulate forest practices by Sanctuary administrators. There is no research or evidence which would justify the statement made in the proposed DEIS that the "greatest source of non-point discharge is the forest." This statement needs clarification and tree farmers must be assured that they can continue to grow and harvest trees pursuant to Washington's Forest Practices Act, one of the most stringent in the country.

Response: NOAA's Strategic Assessment Branch has analyzed existing watershed data from the National Coastal Pollutant Discharge Inventory to determine sources of runoff. Summaries of pollution discharges for total volumes of nitrogen, lead, and all suspended solids combined indicate that with the exception of suspended solids discharged by paper mills, the greatest source of sediments discharged into sanctuary waters is from natural forest runoff.

Despite this evidence, NOAA will not be directly regulating upland uses. However, NOAA will coordinate with the upland user groups, and managing agencies to minimize non-point source impacts on Sanctuary resources.

Comment: The suggestion that excessive erosion from clear cutting practices is the source of most non-point source pollution from forests supports the need for further study of this common practice and the issuance of more stringent controls due to the steep and unstable slopes and amount of rainfall.

Response: NOAA agrees and will conduct monitoring and research initiatives in coordination with those living and working in the watersheds to minimize the impacts from timbering activities.

Discharges Outside the Sanctuary

Comment: Clarify to what extent the "sphere of influence" of the discharge regulation extends, to what degree it may affect coastal communities including the tribes, and who determines if injury to a Sanctuary resource has occurred. Would a community such as Ocean Shores or an Indian tribe face increased water quality regulations or enforcement? Further, does the discharge prohibition apply to particulates that are discharged into the air from pulp mills and subsequently enter the Sanctuary and harm Sanctuary resources and qualities?

NOAA should not impose additional restrictions, beyond the existing requirements of the Federal Water Pollution Control Act (FWPCA), on the discharge of effluent and dredge spoils into marine waters. There is no evidence that additional restrictions on these activities are required to protect water quality in the proposed sanctuary.

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Response: The NMSA protects Sanctuary resources and qualities (including water quality) from the impacts of discharges from within and outside the boundary of a Sanctuary whether airborne or waterborne. NOAA is responsible for determining injury to Sanctuary resources. Discharges pursuant to existing permits may be continued subject to the certification requirements of Sec. 925.10. New permits are subject to the review process of Sec. 925.11. At a minimum, secondary treatment will be required for any treatment plants discharging directly into the Sanctuary. With respect to airborne or waterborne discharges outside the Sanctuary, NOAA may condition such permits only if it is established that the discharges are entering the Sanctuary and injuring Sanctuary resources or qualities. NOAA will work closely with all to ensure that none is unduly burdened by permitting requirements related to discharges. NOAA will coordinate with the State's Air Quality Board and Department of Ecology to monitor air and water quality over and in the Sanctuary.

Application of Discharge Regulations to Vessel Traffic

Comment: The application of this regulation should prohibit organic and inorganic discharges from fishing vessels and submarines (including bilge), aircraft. The prohibition should apply to all naval operations.

Response: The Sanctuary regulations specify the fishing and vessel related activities exempted from the discharge prohibition (Sec. 925.5(a)(2)(i)-(iv)). Discharges and deposits from vessels are prohibited except for specific discharges intended to provide for traditional fishing activities, such as fish wastes resulting from traditional fishing operations in the Sanctuary, and for allowed vessel operations in the Sanctuary, namely biodegradable effluent incidental to vessel use and generated by approved marine sanitation devices, water generated by routine vessel operations, and engine exhaust. Such discharges are determined to be of minimal threat to the Sanctuary and are important for the safe and effective functioning of fishing and other vessels. Other discharges from vessel operations are prohibited. If in the future NOAA determines that increased protection for Sanctuary resources and qualities from these exempted activities is warranted, the Sanctuary regulations could be revised.

Issue: Oil and Gas Development

Comment: NOAA's failure to offer as an alternative an outright, no conditions ban on hydrocarbon development within the Sanctuary is contrary to NEPA regulations, 40 CFR 1502.14 which states that the alternatives section is the heart of the environmental impact statement. NOAA should permanently ban oil and gas exploration, development, and production activities.

Response: Section 2207 of the Oceans Act of 1992 prohibits oil and gas exploration, development and production within the Sanctuary. The Sanctuary regulations repeat this prohibition.

Contingency Plans

Comment: The Sanctuary should establish a contingency plan in coordination with existing state and Federal contingency plans. Efforts should be made to coordinate with the State of Washington Departments of Wildlife, Fisheries, Ecology, and Natural Resources and pursue data sharing opportunities.

Response: The FEIS/MP identifies existing oil spill contingency plans and efforts in the State of Washington to cover the Strait of Juan de Fuca and Outer Coast. NOAA will coordinate closely with the existing agencies involved in contingency and emergency response planning, particularly the U.S. and Canadian Coast Guard and the State of Washington Office of Marine Safety (OMS). However, NOAA agrees that the Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype Sanctuary Contingency Plan is being tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sites, including the Olympic Coast National Marine Sanctuary. To implement successfully an organized emergency response, NOAA will incorporate state and Federal legislation as well as local efforts into the Sanctuary Contingency Plan.

Comment: NOAA needs to provide for better oil spill response planning.

Response: NOAA is coordinating with the regional response committees of the OMS to ensure that the equipment is available to address an emergency that would threaten Sanctuary resources.

Comment: An Oil Spill Response Center should be sited in close proximity to the Sanctuary to address small spills north of Grays Harbor where there is currently a lack of oil spill response capability.

Response: NOAA is promoting this idea in its participation on the regional response subcommittee whose jurisdiction is the Strait of Juan de Fuca and the Outer Coast. However, priority will be placed on the stationing of tugs and barges dedicated to emergency response.

Comment: The tribes should be properly funded to handle resource damage assessment as well as other activities where an oil spill could impact their subsistence and ceremonial harvest and cultural values.

Response: The reservations are not within the Sanctuary boundary. Therefore, the Sanctuary cannot dedicate funds to the Tribes for the purpose of damage assessment pursuant to a spill of hazardous materials.

Comment: NOAA should request that the oil industry's Marine Spill Response Corporation station a tractor/tug response vessel at Neah Bay.

Response: NOAA has made the recommendation to the subcommittee on emergency response for the Strait of Juan de Fuca and the Outer Coast. NOAA is actively participating in formulating the recommendation to the State, and will coordinate with the Makah Tribe in their planning initiative to expand their marina to plan to accommodate a tug or emergency response vessel that is of appropriate size to service the Outer Coast and the Strait of Juan de Fuca.

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Comment: NOAA should ensure that drills are conducted for the Clean Sound Cooperative with outside evaluation.

Response: NOAA intends to hire an operations manager immediately after designation to address issues related to vessel traffic and contingency planning. One of the priorities of this position will be to encourage the Coast Guard to focus on the Sanctuary during its emergency response drills.

Comment: NOAA should propose the examination of extending unlimited liability for spills to the shipping companies and the original firms providing the original source materials involved in the polluting activities.

Response: The NMSA only provides NOAA with the authority to collect \$100,000 per day for each violation pursuant to 16 U.S.C. 1437(c)(1), and damages to Sanctuary natural resources pursuant to 16 U.S.C. 1443.

Issue: Protection of Treaty Rights

Comment: NOAA's regulations do not formally recognize the Federal Government's trust responsibility to the coastal Tribes. The regulations contain no provision which formally requires the Director to consider and protect tribal interests when ruling on permit applications to conduct development activities within the Sanctuary. To address this issue, the following modifications to the Sec. 925.8 should be made:

The Director * * * may issue a permit * * * to conduct an activity otherwise prohibited by Sec. 925.5(a)(2)-(7), if the Director finds that the activity will: further research related to Sanctuary resources: * * * or promote the welfare of any Indian Tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as * * * the impacts of the activity on adjacent Indian Tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian Tribe, the Director shall consider and protect the interests of the Tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the Tribe

Response: NOAA agrees that the designation of the Olympic Coast National Marine Sanctuary is subject to the Federal government's general fiduciary responsibility to the coastal tribes. Accordingly, NOAA has modified Sec. 925.9(d) of the regulations to incorporate the recommended language.

Comment: NOAA should apply the management plan equally to tribal and non-tribal governmental entities within the adopted boundary equally.

Response: NOAA is legally bound to recognize treaty secured rights and has no intention to interfere with these rights. As such, there will be circumstances in which Sanctuary regulations will apply to tribal and non-tribal members differently.

Issue: Vessel Traffic

Comment: Route tankers and barges as far away from near-shore reefs and islands as possible. Clarify what types of vessels can transit close to shore.

Response: There exists a Cooperative Vessel Traffic Management System (CVTMS) established and jointly managed by the United States and Canada. The CVTMS is a mandatory regime and consists of all navigable waters of the Strait of Juan de Fuca and its offshore approaches, southern Georgia Strait, the Gulf and San Juan Archipelagos, Rosario Strait, Boundary Pass, Haro Strait, and Puget Sound, bounded on the west by longitude 147 deg.W. latitude 48 deg.N., and on the northeast by a line along 49 deg.N. from Vancouver Island to Semiamoo Bay.

The rules of the CVTMS are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment. The rules apply to:

- a) Each vessel of 30 meters or more in length; and
- b) Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more objects, other than fishing gear, where:
 - 1) The combined length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters or more; or
 - 2) The vessel or object towed is 20 meters or more in overall length.

Both the Canadian and the United States Coast Guards are studying methods to improve the CVTMS in the area. Items being studied include replacement of outdated equipment, elimination of gaps in coverage, and increasing operator training and assignment length.

The Oil Pollution Act of 1990 (OPA 90) requires the U.S. Coast Guard to conduct a national Tanker Free Zone Study. This study is nearing completion and will recommend regulations requiring tank vessels to remain offshore during coastal transits.

Further, NOAA has recommended to the U.S. Coast Guard that an International Maritime Organization (IMO) approved ATBA be established within the proposed Sanctuary boundary. This would request that vessels transporting hazardous materials remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme. Although ATBA's are not compulsory for foreign flag vessels, a maritime state may make such an area compulsory for domestic vessels transiting the waters under its jurisdiction.

Comment: NOAA should put forth a vessel traffic management plan, spearheaded by the U.S. Coast Guard that addresses research needs, vessel traffic monitoring and communication systems, and future regulatory alternatives. The management plan should be proactive, and establish a timetable for considering new vessel traffic regulations in the future.

Response: NOAA is working with the U.S. Coast Guard, which has the primary authority for vessel traffic regulation, to determine the need for additional measures to

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ensure protection of Sanctuary resources and qualities. In addition, NOAA will work with the U.S. Army Corps of Engineers (COE) and the EPA regarding vessel traffic activities resulting from the transport of dredged material through the Sanctuary for disposal outside the Sanctuary. These consultations will aim to determine which resources are most at risk, which vessel traffic practices are most threatening, and which regulations or restrictions would be most appropriate to alleviate such risk.

NOAA agrees that an improved vessel traffic monitoring and communication system along the coast is desirable. OPA 90 requires the Secretary of Transportation to complete a comprehensive study on the impact of installation, expansion, or improvement of vessel traffic servicing systems. NOAA will work with the State of Washington's OMS, the U.S. Coast Guard, and appropriate public agencies during the development of these monitoring studies to determine an appropriate system for the Sanctuary and the need for any additional site-specific protective measures.

Vessel traffic monitoring and research and coordination on this subject have been incorporated into the Sanctuary management plan.

Comment: Curtail traffic during poor weather conditions.

Response: NOAA will work with the state, U.S. Coast Guard, and appropriate public agencies to determine the need for further vessel traffic regulations to specifically address vessel traffic during adverse weather conditions.

During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the area of the Juan de Fuca Region CVTMS, the Cooperative Vessel Traffic Management Center may issue directions to control and supervise traffic. They may also specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

Further, the U.S. Coast Guard's Navigation Rules, International and Inland, speak specifically to the conduct of vessels while at sea. Rule 6 of the International and Inland Steering and Sailing Rules states that "Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions."

Comment: Prohibit engine powered water craft of any type.

Response: A fundamental objective of the sanctuary program is "to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities" (16 U.S.C. 1431(b)(5)). NOAA will consider the threats from all types of vessels--power driven, sailing, or paddle propelled--as a continuing analysis of vessel traffic within the sanctuary boundaries.

Comment: Manage the off-loading or exchange of cargo or oil.

Response: No offloading or exchange of oil occurs within the boundary of the Sanctuary. This activity generally occurs in ports which are located outside of the Sanctuary boundary. Further, this type of activity is addressed by both OPA 90 and programs being established by the recently created Washington State OMS.

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Comment: Prohibit shipment of reclaimed spent nuclear fuel from foreign reactors through the Sanctuary.

Response: As previously noted, NOAA has recommended to the U.S. Coast Guard that an IMO approved ATBA be established within the Sanctuary boundary. This would require vessels transporting hazardous materials to remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme.

NOAA will also work with the State of Washington's OMS and both the U.S. and Canadian Coast Guards to be informed of, and alerted to, in a timely and regular manner, all hazardous cargo carriers transiting near Sanctuary waters. Further, through participation in regular meetings of the Washington State Regional Marine Safety Committees and discussions with the U. S. Coast Guard, NOAA will ensure that contingency plans adequately address such transport issues.

Comment: Prohibit commercial vessel anchorages within the Sanctuary, particularly off Makah Bay, except in emergencies.

Response: The use of the Makah Bay anchorage by vessels waiting either for an available pilot at Port Angeles or instructions from their home office, has been examined. Currently, its use as a temporary anchorage has been agreed upon by both the U.S. and Canadian Coast Guards. This is viewed as a more favorable alternative than having such vessels continuously underway within, and off the entrances to, the Strait. Vessels at anchor are subject to MARPOL, U.S. Federal law, and Sanctuary regulations regarding discharges. The use of this anchorage is monitored by Tofino Vessel Traffic Service which can also educate such vessels regarding the Sanctuary and its regulations.

Comment: Clarify NOAA's authority to regulate vessel traffic within State of Washington waters.

Response: Section 303 of the NMSA gives NOAA the authority to promulgate regulations to implement the designation, including regulations necessary to achieve resource protection.

Comment: The State and Federal government have appropriated \$75 million to expand and enhance maritime activity at Grays Harbor through waterway dredging and port terminal development programs. If vessel traffic is restricted, one branch of the government would be defeating the purpose of other parts of the government.

Response: NOAA has studied vessel traffic along the Washington coast. The result of the analysis was the recommendation for the previously mentioned ATBA. This proposal, if adopted, would add approximately 17 nautical miles on a transit from Grays Harbor to the entrance of the Straits of Juan de Fuca and approximately 21 nautical miles on a transit from the entrance of the Straits to Grays Harbor. In comparison to the costs of cleanup, legal fees, liability, fines, loss of cargo, and vessel and environmental damages, the proposals to establish the ATBA seem reasonable.

Comment: Double-hulled proposals are not economically sensible in the foreseeable future.

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Response: Congress has mandated (OPA 90) national double hull requirements for tank vessels.

Issue: Overflights

Comment: Establish the boundary for overflights at the beach rather than one (1) mile inland.

Response: The boundary for overflights is at the shoreline and not one (1) mile inland.

Comment: Establish a 2,500 foot minimum flight altitude over the sanctuary.

Response: To be consonant with current regulations regarding flights over chartered National Park Service Areas, U.S. Fish and Wildlife Service Areas, and U.S. Forest Service Areas, NOAA is prohibiting the flying of motorized aircraft at less than 2,000 feet above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, and at less than 2,000 feet above the Sanctuary within one nautical mile seaward from the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe. NOAA will work with the Federal Aviation Administration (FAA) on how best to reflect this limitation on aeronautical charts.

Comment: Permit search and rescue at all times by whatever aircraft is needed to accomplish the task.

Response: The prohibitions set forth in the Sanctuary regulations do not apply to activities necessary to respond to emergencies threatening life, property, or the environment pursuant to Sec. 925.5(c) of the regulations. Thus, in any emergency, search and rescue aircraft are allowed to perform whatever tasks are required within the Sanctuary boundary.

Comment: When necessary to bring a research flight into the area below the Sanctuary prescribed ceiling, regulations should require the plane's engine be kept at or below a reasonable decibel level as heard from the ground.

Response: FAA regulations (14 CFR part 36) codify noise standards for aircraft operating within U.S. airspace. Adherence to these standards is already required. When research is to be conducted within the Sanctuary boundary, aircraft operators will be required to obtain a permit and conduct such research in such a manner so as to minimize disturbance yet remain within safe aircraft operating parameters.

Issue: Living Resource Extraction

Fishing

Comment: NOAA should not restrict access to fishing grounds or catch-ability. Crab fishing and razor clam digging must be allowed.

Response: The regulation of fishing is not authorized by the Designation Document. NOAA has determined that existing fishery management authorities are adequate to address fishery resource issues. As with all other fisheries that occur within the Sanctuary, crab fishing and razor clam digging remain under the regulatory authority of existing Federal, state, tribal and regional fishery authorities. NOAA does not view fishing as contrary to the goals of the Sanctuary. The sanctuary program is by law mandated "to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources * * * ." (including fishing) (16 U.S.C. 1431(b)(5)).

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the National Marine Sanctuary Program has a different and broader mandate under the NMSA to protect all Sanctuary resources on an ecosystem-wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution, the Marine Sanctuary Program is also concerned about the potential incidental impacts of specific fishery techniques on all Sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Olympic Coast, fish resources are already extensively managed by existing authorities and NOAA does not envision a fishery management role for the Sanctuary Program. Accordingly, fishing activities have not been included in the list of activities in the Designation Document subject to regulation as part of the Sanctuary regime. However, the Sanctuary Program will provide research results and recommendations to existing fishery management agencies in order to enhance the protection of fishery and other resources within the Sanctuary.

Aquaculture

Comment: Clarify NOAA's intention to regulate, condition, or prohibit aquaculture activities throughout the Sanctuary and adjacent to Indian reservations.

Response: The Sanctuary regulations do not directly prohibit aquaculture operations within the Sanctuary boundary. However, discharge of matter into the Sanctuary, or alteration of or construction on the seabed in connection with aquaculture activities are prohibited. It is unlikely that permits would be granted for aquaculture activities in the Sanctuary that violate these prohibitions. This determination is based upon U.S. Army Corps of Engineers (COE) guidance related to permits for fish pen mariculture operations, which prohibits fish farms in Federal natural resource areas, such as national seashores, wilderness areas, wildlife refuges, parks or other areas designated for similar purposes (e.g., national marine sanctuaries).

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Comment: Kelp harvesting should be banned or regulated within the Sanctuary.

Response: At present there is no kelp harvesting within the Sanctuary. While kelp harvesting was proposed to be included within the scope of activities listed in the Designation Document as subject to potential regulation under the Sanctuary Program, the final Designation Document does not list kelp harvesting. Kelp is only found within the state waters of the Sanctuary. Because the Washington Department of Natural Resources (DNR) has promulgated regulations for the management of kelp which should adequately protect the kelp, NOAA does not believe it necessary to list kelp as being subject to potential Sanctuary Program regulation. If the state regulations do not adequately protect the kelp within the Sanctuary, the Sanctuary Designation Document could be amended following the same procedures used to promulgate this Designation Document to authorize the regulation of kelp.

Issue: Marine Mammals, Sea Turtles and Seabirds

Comment: Clarify "takings". The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the ESA, the MMPA and the MBTA, and what further impact it will have on the fishing community.

Response: "Taking" is defined in section 925.3 of the regulations to mean: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the ESA to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct and, (2) for any other marine mammal, sea turtle, or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. While marine mammals, seabirds and endangered and threatened species are protected under the MMPA, ESA and MBTA, NOAA believes that the higher penalties afforded under the NMSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either \$500 or \$2,000 per violation, depending on the violation. The MMPA sets maximum civil penalties at \$10,000 and maximum criminal fines at \$20,000. The ESA sets maximum civil penalties at \$500, \$12,000 or \$25,000 per violation, depending on the violation; maximum criminal fines are set at \$50,000. (All three statutes also provide for imprisonment for criminal violations.)

Section 307 of the NMSA allows NOAA to assess civil penalties as high as \$100,000 for each violation. In addition, monies collected under the NMSA are available for use by the National Marine Sanctuary Program.

Comment: The MBTA would not allow any taking of migratory birds in the sanctuary, thus providing even stronger prohibition than sanctuary status can provide.

Response: See above response. Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of migratory birds within the Sanctuary. Including a prohibition on "taking" marine birds in the Sanctuary regulations allows such violations to be subject

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to the civil penalties authorized by the NMSA which far exceed those authorized by the MBTA.

Comment: Prohibit all takings of marine mammals and seabirds, regardless of military or fishing exemptions.

Response: Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of marine mammals and seabirds in or above the Sanctuary except as authorized by the NMFS or the United States Fish and Wildlife Service under the authority of the MMPA, as amended, 16 U.S.C. 1361 et seq., the ESA, as amended, 16 U.S.C. 1531 et seq., and the MBTA, as amended, 16 U.S.C. 703 et seq., or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply. Exemptions include a limited five-year incidental take of marine mammals provided by interim regulations promulgated pursuant to the MMPA, which are in effect until October, 1993. The ESA also has a limited incidental take exemption. See 16 U.S.C. section 1539(a)(2)B(i). NMFS, in conjunction with environmental groups and the fishing industry, is developing a permanent management regime to be implemented upon expiration of the MMPA interim regulations.

If in the future NOAA determines that the existing regulations promulgated under MMPA, ESA, MBTA or any other state or Federal statute are not adequate to ensure the coordinated and comprehensive management of marine mammals and seabirds, changes to the Sanctuary regulations would be undertaken in accordance with the requirements of the NMSA, NEPA and APA.

Comment: Exclude from [takings] prohibition birds considered game.

Response: The only birds Sec. 925.5(a)(6) prohibits the taking of are seabirds--seabirds are not considered game species.

Comment: Section 925.5(a)(6) of the proposed regulations would prohibit the taking of marine mammals or seabirds unless affirmatively permitted by regulations promulgated under authority of the ESA, MMPA, or MBTA. Because these regulations do not expressly permit any takings by treaty Indians, the proposed sanctuary regulations would effectively prohibit the Makah Tribe from exercising their treaty rights to take marine mammals. The proposed regulations would also hinder the tribe's ability to exercise its fishing rights by precluding fisheries which result in the incidental taking of marine mammals and seabirds.

The DEIS/MP offers no conservation justification for imposing restrictions on the taking of marine mammals and seabirds which go beyond the restrictions imposed by the ESA and MMPA. The DEIS/MP concedes that the purpose of the proposed sanctuary regulations is not to protect particular species from extinction. According to the DEIS, the purpose of these additional prohibitions in the proposed regulations is to "extend protection for sanctuary resources on an environmentally holistic basis." This goal does not permit infringement of treaty rights. Therefore, the regulations should be amended by adding "or in accordance with any treaty to which the United States is a party."

Response: The regulatory prohibitions do not abrogate or obstruct any rights under an existing treaty. The regulations have been changed by adding "or pursuant to any treaty

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with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply." The treaty between the Makah Tribe and the United States explicitly assures the "right of taking fish and of whaling or sealing at usual accustomed grounds and stations." (Article 4, Treaty of Neah Bay, 1855).

Incidental takes of marine mammals can legally occur under permit and exemption provisions of the MMPA. Currently, Washington coastal tribes apply for and receive exemption certificates from NMFS for the incidental taking of marine mammals during fishing. Fees for this exemption are waived for tribes.

Further, tribes cannot be denied entry into any fishery based on the likelihood or occurrence of seabird or marine mammal takings.

Comment: Change the wording of the regulation to read "as authorized or permitted by NMFS or [the U.S. Fish and Wildlife Service] USFWS under the authority of the MMPA and ESA." NMFS suggests that the preamble and/or regulations clarify that Sanctuary permits will not be required for activities authorized or permitted by NMFS or USFWS under MMPA or ESA. Such clarification would relieve many concerns over the possibility of overlapping and potentially duplicative permitting requirements.

Response: NOAA has amended the regulation by adding "as authorized by the National Marine Fisheries Service or the United States Fish and Wildlife Service under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq. * * *." The inclusion of "as authorized or permitted" is viewed by NOAA as redundant.

Issue: Sanctuary Administration

Regulations/Permits

Comment: NOAA should use economic incentives rather than regulations to ensure that activities do not impact resources.

Response: NOAA does not have sufficient authority to provide economic incentives to ensure that activities do not impact Sanctuary resources. Even regulations, which include economic disincentives such as monetary penalties, are not sufficient to ensure that any activity does not impact resources.

Comment: Clarify the statement: "When a conflict with a sanctuary regulation related to specific [non-sanctuary] regulations occurs, the one more protective of sanctuary resources will prevail." NOAA regulations should not override those of the local jurisdictions. NOAA needs to clarify:

- 1) The application of this policy to fishing;
- 2) Types of conflicts the statement applies to;

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- 3) Who determines whether a conflict exists; and
- 4) The process for resolving a conflict.

Response: NOAA agrees that the statement as written in the DEIS/MP is unclear. Accordingly, the statement has been deleted in the FEIS/MP. Essentially, the statement meant that if two regulations exist covering an activity in the Sanctuary, one promulgated by NOAA under the NMSA authority and the other by another agency under a different statute, compliance with the less restrictive regulation will not relieve the obligation to comply with the other more restrictive one.

Comment: NOAA should follow the guidelines of NEPA when proposing any change in regulations that are listed in the scope of regulations. This is especially applicable to vessel traffic and discharge regulations. Also, clarification is needed on the rulemaking and amendment processes.

Response: Listing activities in the scope of regulation reflects that the issues and alternatives were addressed in the FEIS/MP, public hearings were held, and public comments were solicited regarding the activities. If NOAA later proposes the regulation of an activity listed in the scope of regulations in the Designation Document but not regulated at the time of Sanctuary designation, NOAA will request public comments on the proposal. When NOAA plans to amend a rule that has been promulgated, an analysis of the issues, affected environment, alternatives and consequences will be completed and public comments solicited. NOAA will then modify the proposal if necessary and respond to public comments when taking the final action.

Comment: A procedure must be established to disagree with management and issue an appeal if permits to conduct research are denied.

Response: Section 925.12 of the Sanctuary regulations set forth the procedures for appealing denials of Sanctuary permits. The appeal process involves a written statement by the appellant to the Assistant Administrator of NOAA. The Assistant Administrator may conduct a hearing on the appeal.

Comment: Clarify the procedure for obtaining permits for low-flying aircraft engaged in ongoing species monitoring studies and damage assessment studies in response to an incident such as an oil spill. Activities authorized by the NMFS and USFWS should not require a Sanctuary permit because the requirements for permits would be duplicative.

Response: All flights engaged in monitoring or research activities that fly below 2,000 feet are required to obtain a Sanctuary permit, or, if the activity is already pursuant to a permit, to have that permit certified. Permits are not required for overflights necessary to respond to emergencies threatening life, property or the environment.

Comment: NOAA should not grandfather existing uses if otherwise prohibited by sanctuary regulations.

Response: Section 304(c)(1)(B) of the NMSA specifies that NOAA may not terminate any valid lease, permit, license, or right of subsistence use or of access, if the lease, permit, license, or right is in existence on the date of designation of any national marine sanctuary * * *."

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Comment: Treaty secured rights should not require sanctuary certification. Further, NOAA should obligate federal regulators to consider and protect tribal interests when issuing permits which may affect those interests.

Response: Treaty secured rights do not require certification by the Sanctuary program pursuant to Sec. 925.5(g). NOAA agrees that pursuant to its trust responsibility to the tribes, it should consider and protect tribal interests when issuing permits. Therefore, Secs. 925.9 and 925.11 have been modified accordingly. While NOAA as a trustee urges all other Federal agencies to consider and protect tribal interests, it does not have the legal authority to require other Federal agencies to consider and protect tribal interests when issuing permits pursuant to other regulatory authorities.

Comment: The regulations, exemptions and authority to place conditions on existing permitted activities are unclear.

Response: Section 304(c)(2) of the NMSA provides NOAA with the right to regulate the exercise of a lease, permit, license, or right of subsistence use or of access existing on the effective date of Sanctuary designation.

Comment: Sanctuary management should be formally coordinated with tribal regulatory and law enforcement authorities through cooperative agreements.

Response: Cooperative agreements will be developed as necessary between NOAA and the tribes regarding regulatory and law enforcement activities.

Comment: The Sanctuary should offer increased enforcement which should be conducted by Sanctuary personnel rather than the U.S. Coast Guard. Clarify the enforcement procedures.

Response: There will be enforcement of Sanctuary regulations through cooperative agreements with the U.S. Coast Guard, NMFS, WDF, the coastal tribes, USFWS, and the National Park Service (NPS). Considering fiscal constraints, level of use, and availability of enforcement personnel working in the field already, NOAA has determined that it is not a high immediate priority to hire Sanctuary enforcement personnel. The Sanctuary must first become fully staffed and operational, and a determination must be made whether additional enforcement personnel are needed. The enforcement procedures will be determined pursuant to the cooperative agreements that are established.

Comment: The broad scope of the discharge prohibition will require a well-coordinated enforcement operation to monitor all discharge and disposal activities from sources on land as well as in offshore, coastal and inland waters over large areas outside of the Sanctuary boundary. It may be impossible to determine the origin of discharges or deposits found in the Sanctuary after the dumping activity has occurred.

Response: The prohibition on discharges from outside the boundary relates to discharges that enter and injure Sanctuary resources. NOAA must establish that discharges not only enter, but injure the resources before enforcement actions will be taken. It will, therefore be desirable for NOAA to undertake a comprehensive monitoring program by which it can determine ecosystem health and use impacts.

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Comment: NOAA should impose unlimited liability for spills extended to shipping companies and firms providing original source materials involved in polluting activities.

Response: NOAA is permitted to seek penalties of up to \$100,000 per day for a violation pursuant to section 307(c)(1) of the NMSA (16 U.S.C. 1437(c)(1)), and for natural resource damages pursuant to section 312 of the NMSA (16 U.S.C. 1443).

Transboundary Coordination

Comment: NOAA should coordinate with other Federal and Canadian authorities to regulate vessel traffic, reduce the risk of oil spills, and eliminate oil and gas drilling in Canadian waters adjacent to the proposed sanctuary. NOAA should encourage an adjacent sanctuary along the west coast of Vancouver Island.

Response: NOAA agrees and is working with the Canadian Coast Guard, the U.S. Coast Guard and the Washington OMS to reduce the risk of oil spills. The regulation of vessel traffic will currently remain with the U.S. and Canadian Coast Guards and the OMS. NOAA will support any Canadian initiative to designate a marine protected area in Canadian waters on the Pacific Coast.

Advisory Committee/Decision Making

Comment: NOAA and the State of Washington should work together to determine the composition of the Sanctuary Advisory Committee (SAC). The SAC should include representatives from private landowners, local industry, the county and tribes. The SAC should be based at the local level to oversee operations and help maintain strong local input.

Response: NOAA will work with local user and interest groups and state and local governments to obtain broad representation on the SAC. The law limits the SAC to no more than 15 members.

Comment: The SAC should have the power to direct the Sanctuary manager and set priorities for funding. The SAC decisions should be binding. If the decisions are not binding, then the manager should at least provide a rationale for any actions taken which are directly contrary to the recommendations of the SAC.

Response: The SAC recommendations to the manager will be instrumental in guiding the manager with respect to prioritizing actions. If the manager chooses not to pursue the recommendations of the SAC, a rationale will be provided to the members of the SAC.

Comment: One of the first tasks of the SAC should be to review and update the State of Washington's coastal zone management program to ensure consistency with the Sanctuary management plan. The Sanctuary management plan goals and objectives should also be reviewed.

Response: Prior to designation, the State of Washington will review the FEIS/MP as part of its consistency determination as it relates to Washington's approved coastal zone management program. The WDOE has jurisdiction for the Shoreline Management Act. The SAC will not share that jurisdiction, rather, the SAC will be responsible for

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reviewing the Sanctuary management plan goals and objectives. The SAC's first priority will be to help determine the five-year Sanctuary operating plan establishing priorities for education, research, monitoring, facilities siting and administration.

Management Alternatives/Strategies

Comment: The management plan needs to account for tribal sovereignty and jurisdiction with respect to cultural resources, law enforcement and research practices. NOAA needs to recognize the need to coordinate with each tribal entity in the same manner as with the state and its management agencies.

Response: NOAA acknowledges the importance of tribal sovereignty. Nothing in the designation will impact the treaty rights of the coastal tribes. NOAA will consult closely with the tribes on any action that may potentially impact tribal rights or interests.

Comment: Implementation of the final management plan must be adequately funded in order to prevent pollution and resource damage.

Response: The level of funding for the first year after Sanctuary designation will depend upon the Sanctuary Program's funding which is authorized and appropriated by Act of Congress. However, the reality of the program's funding situation will require the manager and SAC to identify alternative sources of funding for Sanctuary programs.

Comment: A volunteer program, coordinated by a full-time volunteer coordinator, should be established to assist in implementation of the management plan.

Response: NOAA agrees that the establishment of a volunteer program can assist in implementation of the management plan. The SAC will be influential in determining the priority of hiring a volunteer coordinator.

Comment: The management alternatives should more accurately describe NOAA's comprehensive planning as implemented through a combination of legal management authority over certain specific Sanctuary activities and advisory coordination with other entities managing the remaining essential components.

Response: NOAA agrees. The FEIS/MP outlines the regulations which NOAA is promulgating. The FEIS/MP also outlines the role of the SAC, whose composition is aimed at enhancing the coordination with other entities with management jurisdiction in the Sanctuary.

Comment: The Sanctuary manager should have a great deal of responsibility for setting the Sanctuary budget, as well as assigning funds to local governments for assistance in implementing management plans.

Response: The Sanctuary manager will have primary responsibility for recommending the Sanctuary budget to headquarters. The Sanctuaries and Reserves Division has responsibility for the entire National Marine Sanctuary Program budget, and will work with the site manager to develop the annual program budget. The manager has the discretion to earmark funds to local governments or groups to implement Sanctuary programs.

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Comment: Zoning plans should be implemented which accommodate the varying resource management needs within the Sanctuary. Some zoning examples include allowing for the needs of ports to the south, designating areas which would be closed to all consumptive uses on a rotating basis, and zoning specific areas within the sanctuary for the sole purposes of research, recreational use, commercial use and no use.

Response: Zoning is not anticipated as part of the FEIS/MP for the Sanctuary. If NOAA, in consultation with the SAC, believes that zoning would better meet the needs of the program, the management plan and regulations can be amended in accordance with the requirements of the NMSA, the NEPA and the APA.

Research/Education Protocol

Comment: Research results and data should be shared through existing databases with Federal and state agencies and tribes. The sharing of data should be formalized through cooperative agreements.

Response: NOAA agrees that research results and data should be shared and will pursue appropriate cooperative agreements to ensure this coordination.

Comment: It is unnecessary to severely restrict or eliminate activities such as fishing, commercial vessel activity, dredging and aircraft operation in order to carry out the Sanctuary goals of promoting research and public education.

Response: The primary goal of sanctuary designation is the comprehensive long-term protection of marine resources. Some restrictions are necessary to accomplish this goal. Of the above activities, only dredging is being eliminated within the Sanctuary boundary. Research and education provide additional means to promote the goal of marine resource protection.

Comment: Geophysical exploration should not be prohibited, as the information gathered from this research can benefit coastal communities and academic institutions.

Response: NOAA's emphasis on research within the Sanctuary allows for research which may involve an otherwise prohibited activity (such as alteration of or construction on the seabed) as long as researchers obtain a research permit pursuant to Sec. 925.9 of the Sanctuary regulations. NOAA will determine the environmental consequences of the proposed research, including short and long term effects on marine biota (such as noise which may interfere with cetacean communication) in deciding whether to issue a permit.

Comment: The research program should stress applied research such as research which can facilitate fisheries management, provide information on long-term environmental trends, and provide links between the marine systems and the adjacent terrestrial systems. Providing research results to decision makers at the various governmental levels would be an important link in addressing marine resource problems.

Response: NOAA agrees and has clarified this point in the research section of the management plan.

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Comment: Criteria for acceptable research within the Sanctuary should be established prior to formal designation of the Sanctuary. The criteria should be used in review of research permit applications, and an appeal process should be established in the case of research permit application denial.

Response: Research permit applications will be reviewed on a case-by-case basis and evaluated to determine the potential short and long term impacts of the proposed activities. In addition, Sec. 925.12 of the regulations sets forth the procedures for appealing to the Assistant Administrator the denial of a research permit.

Comment: NOAA should conduct research into the effects of fishing activities on the entire marine system. Fish stocks, species abundance, and monitoring information should be presented to the PFMC.

Response: The National Ocean Service and the NMFS have entered into a Memorandum of Understanding outlining the working relationship between the Sanctuary Program and the NMFS. The PFMC will be involved in this agreement, through its relationship with the NMFS. Research which benefits the overall goal of resource protection is addressed within this agreement by highlighting the need for interagency coordination, research and monitoring.

Comment: NOAA should provide for increased education and interpretation of the shoreline through a variety of media. Educational materials and outreach programs should be developed by pre-existing facilities and organizations on the Olympic Peninsula.

Response: Sanctuary designation will provide for increased education and interpretation of the entire Sanctuary ecosystem. Education materials and outreach programs will be developed in cooperation with existing Federal, tribal, state and local entities.