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Part VIII

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

15 CFR Part 925

**Olympic Coast National Marine Sanctuary
Regulations; Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

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Olympic Coast National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary Designation; final rule; and summary of final Management Plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(a)(4) of Public Law No. 100-627, designates an approximately 2,500 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, off the Olympic Peninsula of Washington State, including the waters of the Strait of Juan de Fuca eastward to Koiitlah Point, as the Olympic Coast National Marine Sanctuary (Sanctuary). This document publishes the final Management Plan detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA, by this document, issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservational, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), the Governor of the State of Washington has 45 days of continuous session of Congress beginning on the day on which this notice is published to review the designation and regulations before they take effect. After 45 days, the designation and regulations automatically become final and take effect. However, if the Governor of the State of Washington certifies within the

45-day period to the Secretary of Commerce that the designation or any of its terms are unacceptable, the designation or the unacceptable terms cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State. If the Secretary considers that such disapproval will affect the designation in a manner that the goals and objectives of the Sanctuary cannot be fulfilled, the Secretary may withdraw the designation. A document announcing the effective date will be published in the Federal Register.

ADDRESSES: Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) prepared for the designation are available upon request from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Silver Spring, MD 20910, (301) 713-3125.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, (301) 713-3141.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 303 of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 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;
- (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 authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z), January 11, 1988. The authority to administer the other

provisions of the Act has been re-delegated to the Assistant Administrator of NOAA for Ocean Services and Coastal Zone Management by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

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.

II. Comments and Responses

Issue: Boundaries

Boundary Alternative 1

Comment: NOAA should choose boundary alternative 1 because: (1) it contains most of the unique ecological features off the Washington Coast; (2) NOAA can offer greater protection to the coastal features than the resources further offshore in the event of a spill of hazardous materials; and (3) vessel traffic would be least affected, thereby ensuring safer seas.

Response: NOAA disagrees. Boundary alternative 1 contains most of the ecological features visible above the sea surface. However, a marine sanctuary should encompass a discrete ecological unit with definable boundaries (16 U.S.C. 1433 (b)(1)(F)). The marine mammals and seabirds that transit the waters off the Olympic Peninsula and colonize the offshore rocks and islands forage in the rich waters and benthic communities over and on the continental shelf. The shelf is broad off the Strait of Juan de Fuca. The seaward extent of the shelf coupled with the upwelling produced from the Juan de Fuca Canyon are the physical parameters that support the food chain from the plankton to the marine mammals and seabirds. The offshore rocks and intertidal communities are only one habitat within the marine ecosystem off the Olympic Coast. Therefore, the marine sanctuary should encompass the ecologically significant offshore waters.

With respect to NOAA's ability to protect the offshore waters in the event of a spill, NOAA agrees that there is little that can be done once a spill has occurred. The high seas would most likely render response capabilities ineffective. However, NOAA will coordinate with the U.S. Coast Guard, the Washington State Office of Marine Safety, and the coastal tribes to ensure that there is an adequate response capability for the coastal waters, intertidal regions, and beaches along the sanctuary including seabird and marine mammal rescue capabilities.

Extension of the Sanctuary boundary to the shelf edge provides a buffer area for protecting the coastal resources. NOAA is working with the U.S. Coast Guard to develop a proposal for an Area to be Avoided (ATBA) from the shoreward boundary to 25 nautical miles offshore of the Olympic Peninsula. This ATBA is designed to provide sufficient time to respond to a vessel that loses power off the Olympic Peninsula. The ATBA is compatible with many of the existing voluntarily

adhered to traffic patterns along the coast and thus adds only minimal time and distance to transits between the Strait of Juan de Fuca and destinations to the south.

Boundary Alternative 2

Comment: NOAA should choose boundary alternative 2 as the preferred alternative.

Response: NOAA disagrees for the same reasons stated in response to the previous comment. The seaward extent of boundary alternative 2, which approximates the 50 fathoms depth, has no relation to the seaward extent of the coastal ecosystem.

Boundary Alternative 3

Comment: NOAA should choose boundary alternative 3 as the preferred alternative.

Response: Boundary Alternative 3 excludes the Juan de Fuca Canyon, which is one of the richest regions of the offshore oceanic ecosystem. It also excludes some of the highest concentrations of human uses which threaten the health of the marine ecosystem off the Olympic Peninsula.

Comment: NOAA should not choose boundary alternative 3 as the preferred alternative because it will be too restrictive for vessel traffic.

Response: NOAA is proposing no regulations that will unduly restrict vessel traffic. (See response to comment on boundary alternative 1).

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 Marine Protection, Research, and Sanctuaries Act (MPRSA), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA), if deemed necessary.

Comment: NOAA should not choose boundary alternative 4 because:

(1) It is not scientifically defensible for it fails to protect the important and environmentally delicate estuaries along the southern coast;

(2) It would render ineffective NOAA's resource monitoring and sanctuary enforcement mandates; and

(3) It will be too restrictive for vessel traffic.

Response: The boundary of a marine sanctuary should approximate the most identifiable boundaries of a marine ecosystem. The Site Evaluation List (SEL), from which sites are selected for consideration as marine sanctuaries, identified the coastal offshore islands as the core of the proposed Olympic Coast National Marine Sanctuary (originally identified as the Western Washington Outer Coast). With this focus, NOAA has determined that the boundaries of the ecosystem are encompassed by boundary alternative 4. NOAA recognizes that the coastal estuaries are ecologically valuable and that many organisms that exist within, or transit through boundary alternative 4, depend on the estuaries. However, while the estuaries and outer coast are ecologically linked, the productivity of the two environments is a function of very distinct environmental processes.

NOAA believes that protection of the estuaries could be best achieved through possible inclusion of these areas in programs targeting estuarine management such as, the National Estuarine Research Reserve System, the National Estuary Program, or the Coastal Zone Management Program.

NOAA believes that the size of the sanctuary encompassed by boundary alternative 4 is manageable with respect to research and monitoring initiatives.

As discussed above, NOAA is working with the U.S. Coast Guard to develop a proposal for an ATBA off the northern Olympic Peninsula. It is designed to be as compatible with

existing customary practices among fishermen as possible. NOAA is not promulgating vessel traffic regulations with designation.

Boundary Alternative 5

Comment: NOAA should choose boundary alternative 5 because:

- (1) Activities that are, or could occur, in the southern portion of the study area can affect the resources in the north;
- (2) The entire study area is ecologically connected;
- (3) The management needs are greatest in the south;
- (4) The sanctuary management regime would complement existing management initiatives (Willapa Bay watershed planning processes, Columbia and Snake River Salmon Recovery Planning, State National Heritage Plans); and
- (5) Expansion of the Sanctuary boundary in the future will be too time-consuming.

Response: NOAA's preferred boundary alternative is based on an ecologically identifiable boundary. The northern and southern portions of the study area are distinct with respect to their coastal and offshore ecology. NOAA can protect Sanctuary resources from outside activities through the prohibition on discharges outside the sanctuary boundary that enter and injure Sanctuary resources. NOAA will be involved in planning activities that could potentially threaten Sanctuary resources outside its boundary. The boundary can be expanded in the future if needed.

Comment: NOAA should not choose boundary alternative 5 because it is not necessary to encompass the entire Washington coastline as a marine sanctuary, and it would eliminate any future development of the coastal areas.

Response: NOAA agrees. See response to previous comment.

Comment: A more detailed analysis of the impacts of sanctuary designation must be undertaken before seriously considering boundary alternative 5.

Response: NOAA has undertaken an extensive analysis of the uses and ecology of the southern portion of the study area and believes that the ecologically sensitive estuarine environments are adequately protected.

Alternative Boundary Suggestions

Comment: NOAA should establish a series of smaller site-specific areas surrounding unique marine resources, such as ocean waters immediately adjacent to already protected terrestrial ecosystems such as wildlife refuges and the Olympic National Park. This alternative would afford sanctuary

status to marine resources while maintaining provisions for compatible ocean uses.

Response: NOAA disagrees. Smaller site-specific areas would not encompass an ecosystem for the reasons stated above. Further, designation of the marine sanctuary would allow for the continuation of pre-existing and compatible uses.

Comment: NOAA's analysis of the resources within the study area identified the southern portion as highly important in terms of wildlife and fishery values, particularly the areas in and surrounding Willapa Bay. NOAA should consider modifying boundary alternative 4 by adding a satellite site encompassing the estuarine environment and the offshore waters of Willapa Bay.

Response: NOAA's analysis confirmed that the estuarine areas in the southern portion of the study area are significant natural resources and that many of the resources utilize the waters off the northern coast as well. However, NOAA has determined that the estuarine ecosystems are distinct from the higher energy marine environment of the northern portion of the study area. In addition, the activities in, and adjacent to Grays Harbor are managed pursuant to an existing estuarine management plan promulgated pursuant to the Washington State Shorelands Management Act. The residents living in the watersheds of Willapa Bay are currently preparing an estuarine management plan.

Comment: NOAA should consider the creation of a north and south Olympic Coast National Marine Sanctuary with separate but coordinated management regimes.

Response: The Act requires the designation of one sanctuary on the Western Washington Outer Coast with the offshore Islands and coastal areas of the northern Olympic Peninsula as the core area of the sanctuary. In carrying out this mandate, NOAA examined the seaward, northerly, southerly, and easterly extent of the ecosystem that has as its core the intertidal communities of the outer coast.

Comment: The boundary of the Sanctuary should be modified as further cetacean information is available.

Response: NOAA can modify the boundary in the future, in accordance with the requirements of the MPRSA, the NEPA and the APA, as more information becomes available.

Modification of the Western Boundary

Comment: The outer boundary of the sanctuary should extend westward to a point that minimizes restrictions and

needless re-routing of vessel traffic and harbor maintenance activities at the opening of Grays Harbor. To accomplish this objective, the outer limit of the sanctuary should be set at a distance between 2 and 10 miles from shore.

Response: Sanctuary boundaries are not established based on vessel traffic routes, particularly because routes are subject to change. NOAA will work with existing regulatory agencies to minimize impacts. While vessel traffic is in the scope of sanctuary regulations, NOAA is not promulgating vessel traffic regulations at this time.

Comment: The outer boundary should be established at either the 100 or 500 fathom isobath.

Response: NOAA has established the boundary at the 100 fathom isobath because it is generally recognized to be the seaward extent of the continental shelf, the area where photosynthetic activity is greatest.

Comment: Clarify the rationale for establishing the western boundary of alternatives 4 and 5.

Response: See response to previous comment.

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

Comment: The shoreline boundary should cut across the mouths of all rivers, streams and estuaries because there are sufficient management plans in place providing protection of inland environments such as the Washington State Coastal Zone Management Program and the Grays Harbor Estuary Management Plan.

Response: The shoreline boundary of the Sanctuary has been modified to cut across the mouths of all rivers, streams and estuaries.

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.

Inclusion of the Strait of Juan de Fuca

Comment: The northeastern boundary of the sanctuary should extend further into the Strait of Juan de Fuca to either: (1) The Lyre River; (2) the Clallam County Marine Sanctuary at Salt Creek; (3) Low Point; (4) Crescent Bay/Agate Beach; or (5) Pillar Point. Omission of the Strait of Juan de Fuca from the Sanctuary excludes the head of the Juan de Fuca Canyon from the boundary of the Sanctuary, and thus represents a boundary not based upon an ecological rationale.

Response: NOAA has examined the resources of the Strait of Juan de Fuca and the FEIS/MP has been revised accordingly. Sections III and IV (Alternatives, and Environmental Consequences) examine the benefits and consequences of various alternatives in the Strait of Juan de Fuca. NOAA believes that the existence of a functional biotic community

characteristic of the marine environment extends into the Strait of Juan de Fuca to Observatory Point. Eastward of Observatory Point, the ecosystem is more characteristic of an estuarine environment.

Despite the ecological arguments that support inclusion of the Strait of Juan de Fuca in the Sanctuary boundary, NOAA does not believe that the public has had ample opportunity to analyze and comment on the proposal to add the Strait. Since the Strait of Juan de Fuca lies entirely in state waters, the Strait of Juan de Fuca cannot be included without the approval of the Governor of Washington State. However, NOAA will pursue expanding the boundary if supported by the State of Washington.

Comment: The boundary of the Sanctuary should be contiguous with that of the proposed Northwest Straits Sanctuary. A gap between these two proposed sanctuaries would cause confusion for commercial shipping and fishing interests and government managing agencies.

Response: At this time, the future and nature of the proposed Northwest Straits National Marine Sanctuary is uncertain and cannot serve as a deciding factor in the determination of the eastern boundary of the Olympic Coast National Marine Sanctuary. The boundary of the Olympic Coast National Marine Sanctuary must be determined based on ecological and human use factors. NOAA can modify the boundary in the future if it is deemed appropriate. NOAA will coordinate with existing managing agencies to ensure that the Olympic Coast National Marine Sanctuary and the proposed Northwest Straits National Marine Sanctuary do not unduly disrupt the management of vessel traffic and fishing.

Comment: The boundary of the Sanctuary should not encompass the waters of the Strait of Juan de Fuca because closely-monitored vessel traffic lanes already exist.

Response: The MPRSA encourages multiple uses of the Sanctuary as long as they are compatible with the resource protection goals of the Sanctuary. Clearly, the Coordinated Vessel Traffic System in the Strait of Juan de Fuca is in the best interest of the vessel traffic industry and the environment. NOAA would not interfere with the vessel traffic management regime in the Strait of Juan de Fuca if the Governor of the State of Washington supported inclusion of the Strait of Juan de Fuca in the Sanctuary boundary.

Northern Boundary

Comment: The northern boundary of the Sanctuary should be adjacent to the

international border and include vessel traffic lanes to facilitate the establishment of a cooperative international sanctuary and coordinated vessel traffic management regime.

Response: The northern boundary is adjacent to the international boundary.

Inclusion of the Estuaries

Comment: NOAA recognized both the high resource values of the estuaries and the high level of point source discharges. By including the estuaries in the boundary NOAA would be in a position to work with the Washington Department of Ecology (WDOE) to correct the sources of pollution.

Response: NOAA has been working with the Washington Department of Ecology to address pollution problems in the coastal estuaries. The Grays Harbor Estuary Management Plan was supported by funding provided pursuant to the Washington Shorelands Management Act. NOAA agrees that the estuaries are extremely valuable environments with high levels of point source discharges. However, NOAA believes that the estuaries are ecologically distinct from the offshore waters of the Olympic Peninsula, which is the core area of the Sanctuary. Inclusion in the National Estuarine Research Reserve System (NERRS) is a more appropriate management framework for NOAA involvement in estuarine management.

Comment: The estuaries should be excluded from the Sanctuary boundary because the Washington State Coastal Zone Management Program and the Grays Harbor Management Plan offer sufficient protection to the estuaries.

Response: NOAA agrees. The estuaries are excluded from the preferred boundary of the Sanctuary.

Consideration of Other National Marine Sanctuaries and National Estuarine Research Reserves (NERRS)

Comment: Some commenters believed that NOAA should designate the estuaries as NERR's if they are not included in the boundary of the Sanctuary because of their natural resource values. Other commenters believed that NERR status is inadequate since it does not include the marine environment. Clarification is needed on the specific elements of the NERRS:

- (1) The degree of protection that the NERRS would provide to Grays Harbor and Willapa Bay;
- (2) The process of designation;
- (3) Timetable for designation;
- (4) Assurances that designation would occur; and

(5) The degree of protection to the estuaries that would be provided in comparison to sanctuary status.

Response: The terms of designation as a NERR are determined between the State and NOAA. The process begins with the nomination of an estuary, or portion thereof, to NOAA for inclusion in the NERRS by the Governor of the State. The State holds scoping meetings in the region nominated for inclusion to solicit public input. The State then prepares a draft environmental impact statement and management plan (DEIS/MP) where boundary, management, and regulatory alternatives are assessed and a preferred alternative is decided upon. The DEIS/MP must demonstrate that the key core land and water areas are adequately protected by the state. Once the DEIS/MP is completed, public hearings are held in the region. After a comment period of one month, the State must produce a Final Environmental Impact Statement/Management Plan (FEIS/MP) incorporating the public comments. Once NOAA approves the FEIS/MP the Reserve is officially designated. The entire process requires approximately three years. Designation is contingent upon available funding.

Comment: NOAA should encourage sanctuary designations in Northern Puget Sound, Hood Canal, Southern Oregon and Northern California.

Response: NOAA is working with the State of Washington to study the feasibility of a sanctuary in Northern Puget Sound. New candidates for sanctuary status are selected from NOAA's SEL. Sites in southern Oregon and Northern California are presently on the SEL.

Harbor Exclusion/Inclusion

Comment: How will sanctuary designation influence the disposal of dredge material from harbor maintenance and development activities that occur in the Port of La Push, the mouth of the Quilleute River, and Neah Bay?

Response: No dredge spoil disposal will be permitted within the Sanctuary, except when used in connection with beach nourishment projects related to harbor maintenance activities. Harbors are excluded from the Sanctuary boundary. Therefore, maintenance and development activities can occur, but disposal of dredge material must be either on land or outside the boundary of the Sanctuary.

Growth Management

Comment: The Sanctuary should help to limit population growth.

Response: The sanctuary program has no control over population growth

adjacent to the Sanctuary boundary. Rather, the program exists to ensure that human uses resulting from growth do not have a negative impact on Sanctuary resources.

Comment: Private land owners should not lose development rights to their land, nor should they have the value of their land significantly decreased by regulation without due compensation for that loss.

Response: NOAA is issuing no regulations that will diminish the development rights of private property owners.

Opposition to Sanctuary Designation

Comment: The marine sanctuary should not be designated because: (1) It would shut down the fishing industry; (2) existing legislation and management regimes offer adequate protection; (3) potential industrial interests would be stifled because the sanctuary would over-regulate the local economy and its growth; (4) the ecological/aesthetic values of Washington's coastline are not permanently threatened; (5) local airports in Aberdeen and Ocean Shores would close due to insurance problems; and (6) the Olympic National Park has too much control over the Olympic Peninsula already.

Response: The Sanctuary will not shut down the fishing industry. Fishing is not within the scope of Sanctuary regulation; the regulation of fishing would remain with existing management regimes. Further, the Sanctuary will ensure greater protection from risks due to oil, gas and mineral development and vessel traffic accidents.

NOAA disagrees that existing legislation offers adequate protection of the offshore resources. The threats from such things as vessel traffic, oil and gas development, sand and gravel mining and Navy practice bombing of Sea Lion Rock have not been addressed through a comprehensive management regime that recognizes the value and fragility of the marine ecosystem off the Olympic Peninsula. NOAA does not believe that the Sanctuary will over-regulate the local economy since the main source of income in the region is from tourism, fishing and timber production—none of which will be negatively affected by the Sanctuary. Tourism and fishing will likely benefit from Sanctuary status due to the increased protection of the marine environment.

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 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.

Comment: Clarify NOAA's policy on establishing artificial reefs within the Sanctuary.

Response: There are no artificial reefs in the Sanctuary as of the date of designation. The creation of new artificial reefs would be prohibited pursuant to the prohibition on alteration of, or construction on, the seabed.

Comment: NOAA should prohibit the construction of pipelines on the sea floor.

Response: The regulation prohibiting the alteration of, or construction on, the seabed would prohibit the construction of pipelines on the sea floor.

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.

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 § 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 MPRSA 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 § 925.9(i) 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 § 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: Current management of cultural resources is agreed upon between the Bureau of Indian Affairs (BIA) and the tribes. The BIA supports the tribes in the management of their cultural resources.

Response: See response to previous comment.

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 MPRSA is not duplicative of existing laws protecting historical and cultural resources. The MPRSA 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 MPRSA, 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. 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 § 925.10 or approved by NOAA in accordance with § 925.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 925.11. At a minimum, secondary treatment will be required.

Comment: Current regulations are adequate. NOAA has not proven that the proposed regulations will enhance the recreational or aesthetic appeal, and water quality.

Response: Current regulations do not protect the area from the cumulative impacts of various types of discharges, including: (1) Some ocean dumping; (2) sewage receiving only primary treatment; and (3) non-point source discharges. NOAA's ocean disposal regulation offers protection to the offshore environment that does not otherwise exist. NOAA will work with existing tribal, State and Federal authorities to ensure that the quality of the water and Sanctuary resources are maintained.

Comment: Clarify how discharges from drilling and production rigs may be addressed if oil and gas leasing were to occur in the future.

Response: The regulations prohibit oil and gas exploration, development, and production activities within the Sanctuary. NOAA will work with the Environmental Protection Agency (EPA) to ensure that best available technology is implemented on any drilling rigs located outside of the Sanctuary to ensure that no discharges enter and injure Sanctuary resources and qualities.

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 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: NOAA should not require at a minimum secondary treatment and sometimes tertiary or more for non-point source pollution. It is virtually impossible to subject runoff to these levels of treatment.

Response: NOAA does not require such treatment for non-point source pollution. NOAA will monitor non-point source pollution and work with those living and working in the coastal watersheds to minimize runoff into the Sanctuary.

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 (FWPA), 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.

Response: The MPRSA 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 § 925.10. New permits are subject to the review process of § 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 (§ 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.

Comment: Clarify acceptable and unacceptable discharges from fishing vessels.

Response: See response to previous comment.

Economic Impacts of Discharge Regulations

Comment: Banning the use of approved dredge disposal sites would impose severe economic impacts on marine navigation and commerce, and ultimately to the coastal communities.

Response: The boundary of the Sanctuary does not encompass the approved dredge disposal sites off of Grays Harbor, Willapa Bay, and the Columbia River. However, no new dredge disposal sites may be located within the Sanctuary boundary.

Comment: NOAA must examine the economic impacts of the discharge regulations on existing industries. There are currently 72 identified dischargers in the study area. It is unclear if the proposed Sanctuary would impact the continued operation of the pulp mill's NPDES permitted discharge near Grays Harbor.

Response: The Sanctuary's boundary does not extend south of Copalis Beach. Therefore, the only discharge regulation that would apply to dischargers in Grays Harbor would be the prohibition on discharges from outside the boundary that subsequently enter and injure Sanctuary resources or qualities. NOAA will need to establish that effluents from pulp mills are injuring Sanctuary resources or qualities before it would impose terms and conditions on the pulp mill's NPDES permit. If this situation were to occur, NOAA would work with the discharger, the State of Washington, and EPA to minimize the economic impacts of reducing the impacts.

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.

Comment: NOAA should designate a buffer zone based on ocean currents and local seabed geography to prevent damage from external mineral operations.

Response: NOAA believes that the Sanctuary is large enough to buffer the sensitive canyon and coastal ecosystems from negative impacts of mineral development. Further, NOAA's authority to regulate discharges from outside the Sanctuary boundary that subsequently enter and injure Sanctuary resources or qualities provides additional protection over mineral activities.

Comment: NOAA should commit in the FEIS/MP and Record of Decision to the preparation of an EIS before lifting the prohibition.

Response: As previously discussed, the Oceans Act of 1992 prohibits oil and gas explorations, development and production within the Sanctuary. This prohibition may only be lifted by an Act of Congress.

Comment: The oil companies should be excluded from voicing an opinion regarding the Sanctuary because this privilege should be extended only to those who have spent time enjoying the State of Washington coastline.

Response: The Sanctuary program does not and cannot discriminate against any individual, agency, or interest group. All individuals have the right to voice an opinion.

Comment: Has NOAA come across any proposal for offshore wind generated power?

Response: NOAA is not aware of any proposal for offshore wind generated power.

Comment: The President's decision to postpone OCS activities off the coasts of Washington and Oregon until after the year 2,000 should expire at that time unless affirmatively extended.

Response: Section 2207 of the Oceans Act of 1992 indefinitely bans oil and gas exploration, development and production within the boundary of the Sanctuary. These prohibitions could only be lifted by an Act of Congress.

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.

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 MPRSA 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: Sealion Rock

Comment: NOAA should prohibit, or at least condition, the Navy's practice bombing activities over Sealion Rock due to the impact on seabirds, depositing of metal objects in the Sanctuary, and because the military environment does not require such a sensitive area to be used for such purposes. At the very least, NOAA should prohibit the practice bombing during the breeding season. Section 7 consultations with the Department of Commerce and the Department of the Interior should not be construed as sufficient mitigation because these processes do not address impacts to non-endangered species.

Response: NOAA agrees that the Navy practice bombing of Sealion Rock is inconsistent with the goals of the Sanctuary program. Because the permit under which the Navy conducted its activities over Sealion Rock was rescinded by the Secretary of the Interior in August, 1993, NOAA may

prohibit outright all bombing activities within the Sanctuary and has determined to do so. The regulation adopted by NOAA prohibits all practice bombing and provides that no exemption from the prohibition will be granted.

Comment: NOAA does not have the authority to prohibit or condition the Navy's activities.

Response: Because the Navy's authorization from the Secretary of Interior was rescinded, NOAA now has the authority to not only condition but also prohibit the Navy's practice bombing activities.

Comment: NOAA should place the Navy's bombing activities within the scope of regulation to allow future regulation if necessary. To not list military activities is in conflict with the primary goal of resource protection.

Response: NOAA has addressed Navy activities in § 925.5(d) of the regulations.

Comment: NOAA should investigate the history of the Navy's activities over Sealion Rock to determine if a grandfather clause is warranted.

Response: The history of the Navy's activities and the permit that authorized its activities has been outlined in the FEIS/MP. The Navy's authority to conduct practice bombing activities has been rescinded and thus consideration of a grandfather clause is irrelevant.

Comment: Clarify how Navy bombing of Sealion Rock at 200 feet is less disruptive than commercial overflights.

Response: NOAA does not assert that the Navy's low flying activities are less disruptive than commercial or non-commercial overflights. NOAA's differing regulations in the DEIS/MP applying to Navy and non-military overflights resulted from limitations placed on NOAA by the MPRSA with respect to terminating pre-existing leases and permits.

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 § 925.8 should be made:

The Director * * * may issue a permit * * * to conduct an activity otherwise prohibited by § 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 § 925.9(d) of the regulations to incorporate the recommended language.

Comment: NOAA's regulation prohibiting the taking of marine mammals and seabirds conflicts with treaty rights to fish and hunt marine mammals in tribal usual and accustomed fishing grounds.

Response: NOAA recognizes that, given the standard for abrogating treaty rights enunciated by the Supreme Court in *United States v. Dion*, 476 U.S. 734 (1985), the provisions of the MPRSA do not abrogate the coastal Tribes' treaty fishing and hunting rights. However, it is unclear whether Congress intended the MMPA and the Endangered Species Act (ESA) to abrogate these rights. Recently, the Makah Tribe has pursued clarification regarding the applicability of the Marine Mammal Protection Act (MMPA) and ESA to its treaty rights to hunt whales and seals. The issue is currently being examined by the tribes and the National Marine Fisheries Service (NMFS). Given the concerns raised by the coastal tribes, § 925.5(a)(6) has been revised to read as follows:

Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except 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.*, 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.

In addition, § 925.5(a)(8) has been modified similarly. The revised language recognizes the coastal Tribe's treaty right to hunt whales and seals. However, the regulation also requires that the right be exercised in accordance with the provisions of the MMPA, ESA, and MBTA. If the MMPA, ESA or MBTA is determined to abrogate or otherwise

restrict the Tribe's exercise of its right to hunt whales and seals, then that determination shall apply to the Tribe's exercise of those rights within the boundary of the Sanctuary.

Comment: The regulations fail to preserve tribal control of their cultural heritage. NOAA should amend § 925.5(a)(8) to read as follows:

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.

Response: The MPRSA provides NOAA with the authority to control access to cultural or historical artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historical resource must apply for and obtain a Sanctuary permit from NOAA. NOAA also acknowledges the coastal Tribes' desire to preserve 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. Accordingly, § 925.9(j) has been modified and § 925.9(k) has been added to address the coastal tribe's concerns.

Comment: The regulation prohibiting overflights under 1,000 ft. except for valid law enforcement purposes conflicts with the treaty secured rights to access certain reservation lands such as Tatoosh Island and Ozette, which are only accessible by helicopter in the winter months, and to conduct aerial timber cruises and engage in helicopter logging on portions of the reservation abutting the Sanctuary. Therefore the following amendment to § 925.5(7) is proposed:

Flying motorized aircraft at less than 1,000 feet above the Sanctuary within one nautical mile of the coastal boundary of the Sanctuary and the Flattery Rocks, Quillayute Needles, and Copalis National Wildlife Refuges, except for valid law enforcement purposes or where authorized by a governing body of an Indian Tribe to provide access to reservation lands.

Response: NOAA acknowledges the Tribes' concerns and does not intend to interfere with tribal rights to access reservation lands. Also, for the reasons discussed below, the minimum altitude has been changed to 2000 ft. In order not to interfere with Tribal access to reservation lands, the prohibition on flying has been changed to read:

Flying 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 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.

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°W, latitude 48°N., and on the northeast by a line along 49°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: Clarify "commercial vessel" and distinguish between various sizes, uses, and types of vessels.

Response: "Commercial vessel" means any vessel operating in return for payment or other type of compensation. Clarification between sizes, uses, and types of vessels would require more space than is available in this document. Rather than attempt to hold to a general definition of "commercial vessel", reference will be made to specific types of vessels, i.e., tank vessels, bulk carriers, fishing vessels, pleasure craft, etc., wherever required.

Comment: The Sanctuary boundary should be published on navigational charts.

Response: NOAA agrees and will submit the Sanctuary boundary to the Nautical Charting Division of the National Ocean Service. The boundary will be delineated on the next update of the appropriate navigational chart.

Comment: Spill containment and cleanup measures should be part of appropriate mitigation requirements for vessels operating within the Sanctuary.

Response: OPA 90 mandates that tank vessel contingency plans be prepared for a worst-case discharge, and that vessel plans be reviewed and approved by the U.S. Coast Guard. OPA 90 also stipulates that each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of a discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, is liable for the removal costs and damages resulting from such an incident.

Further, Washington State law (title 88 section 46 Revised Code of Washington) requires the owner or

operator of a tank vessel to prepare and submit an oil spill prevention plan prior to the vessel's entry into a Washington port. The law also requires that each tank vessel, cargo vessel of greater than three hundred or more gross tons, or passenger vessel of greater than three hundred or more gross tons have a contingency plan for the containment and cleanup of oil spills from such vessel into the waters of the State.

Comment: NOAA should provide a more complete explanation of how implementation of each of the regulations would put U.S. shipping companies at an economic disadvantage in relation to foreign vessels. Precisely what would be the estimated cost in dollars, time, inconvenience, and ultimate impact upon U.S. shipping companies.

Response: NOAA is promulgating no regulations that will adversely affect domestic vessels.

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 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: Allow only double-hulled vessels in the Sanctuary.

Response: OPA 90 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have double hulls by 2010. Vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must have a double hull (or double containment system if under 5,000 gross tons), while existing vessels are phased out over a period of years.

As previously stated, the U.S. Coast Guard is completing a study of a tanker free zone where tank vessels would be required to remain offshore during coastal transits. Further, a proposal to establish an ATBA within the Sanctuary boundary has been developed and will be submitted to the International Maritime Organization (IMO) for approval at the earliest possible date which, in accordance with IMO's procedures, is June, 1994. Both actions will serve to ensure that hazardous material laden vessels will remain an appropriate distance offshore.

Comment: Require vessels to have a pilot aboard.

Response: Requirements for pilots are set forth in both Federal and state regulations. NOAA will monitor and review vessel traffic in the Sanctuary and make recommendations to the appropriate regulatory agencies, state and Federal, regarding the need for additional pilotage requirements. Pilotage is currently compulsory for all vessels except those under enrollment or engaged exclusively in the coasting trade on the West Coast of the continental United States (including Alaska) and/or British Columbia. Port Angeles has been designated as the pilotage station for all vessels enroute to or from the sea.

OPA 90 requires the U.S. Coast Guard to designate U.S. waters where a second licensed officer must be on the bridge of a coastwise seagoing tanker over 1,600 gross tons. Under the Ports and Waterways Safety Act, the U.S. Coast Guard also is proposing to require a second officer on foreign flag tankers over 1,600 gross tons and on U.S. registered tankers over 1,600 gross tons.

Comment: Establish a tonnage limit within three nautical miles of shore except for those making a port call.

Response: All types of vessels and traffic patterns will be reviewed by NOAA, the U.S. Coast Guard, and the State of Washington OMS to determine

any appropriate action to be taken. In conducting this review, attention will be paid to vessel type, cargo carried, and vessel size.

Comment: Require all vessels to have English speaking bridge personnel.

Response: All vessels required to participate in the Juan de Fuca region CVTMS are required to make all reports in English.

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.

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 MPRSA 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.

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 § 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 catchability. 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 MPRSA 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.

Comment: No additional fisheries management or regulation is needed in the Sanctuary. Commercial, recreation, and subsistence fishing can be compatible with sanctuary designation, and the existing regulatory framework is adequate at this time.

Response: See response to previous comment. The Designation Document places kelp harvesting within the scope of future regulation since there is no existing management plan for kelp harvesting.

Comment: Clarify the language associated with commercial fishing practices near sunken vessels, rocks and reefs in the proposed sanctuary to insure continuance of historical and customary fishing practices. Existing Federal and state regulations adequately protect archeological treasures, man-made reefs, and natural rock and reef formations. The FEIS should acknowledge and permit prevailing practices.

Response: Commercial fishing vis-a-vis historical resources is an exempted activity under the prohibition against disturbance of historical resources. However, the exemption is only for incidental disturbance and therefore does not allow deliberate disturbance.

Comment: Fishing should either be regulated, or placed in the scope of regulation, because there may be a time in the future when fishing needs to be regulated by the Sanctuary.

Response: NOAA believes that existing authorities are adequate to regulate fishing. Should the need arise to regulate fishing as part of the Sanctuary management regime, the Designation Document could be amended.

Comment: Proposed regulations should result in the gradual reduction of fishing, aquaculture, kelp harvesting and waterfowl hunting to insure that no commercial activity threatens the integrity of any resources in the proposed Sanctuary. Some commenters believed that the Sanctuary should ban all commercial fishing activities except Native American fishing activities.

Response: A blanket reduction of resource-use activities across the

Sanctuary could not be imposed without credible evidence that each resource affected is threatened by a population decrease or stock failure. Absent such evidence, the Act requires that existing uses be facilitated to the extent compatible with the primary objective of resource protection.

Comment: True refugia should be established where all consumptive uses are prohibited for a period of time.

Response: The determination of whether refugia are established in the Sanctuary will be done in coordination with the NMFS, PFMC, Washington Department of Fisheries (WDF), the tribes, environmental groups, and industry. The Sanctuary Advisory Committee (SAC) will be an important forum to address this issue. If, in coordination with other governmental agencies, it is determined that establishment of refugia is a desirable alternative, NOAA will analyze the alternative through the preparation of an environmental impact statement/management plan and solicitation of public input pursuant to the NEPA and the APA.

Comment: Driftnets, trawling, and all dragnet fisheries should be banned from the proposed Sanctuary as inconsistent with the regulation prohibiting alteration of, or construction on, the seabed.

Response: The only net gear used in fisheries in the Sanctuary are trolling gear (for salmon) and trawling gear (for groundfish). The regulatory prohibition on altering the seabed includes an exception for incidental disturbance resulting from traditional fishing operations. NMFS has conducted a limited study of the impact of trawl gear on the benthos and has not identified any resulting systematic destruction. However, the regulations could be modified to regulate any activity that is shown to cause significant disturbance of the seabed. This reflects adherence to the MPRSA's goals of preserving natural and human-use qualities of a marine area.

High-seas driftnets, defined as nets greater than 1.5 miles long, have been banned pursuant to United Nations resolution 46/215. While gillnets and setnets are currently used in the inland waters of the State of Washington, they are not used in Sanctuary waters.

Comment: NOAA should facilitate the regulation of resource extraction within the Sanctuary under a regulatory framework that is controlled by a single agency.

Response: Regulatory authority over resources and resource extraction industries is expressly granted by state and Federal statute. NOAA does not

have the primary regulatory authority over resource extraction. NOAA can act to coordinate the various regulators and can impose additional regulations, but cannot reassign itself or other agencies regulatory authority.

Comment: NOAA must clarify and acknowledge all tribal treaty fishing rights in the FEIS/MP, and the interaction of Sanctuary regulations with the right of tribes to fish in their Usual and Accustomed fishing areas.

Response: This issue is clarified in the Designation Document and in Part II (under Socio-Demographic profile and Land Use). In addition, the coastal tribe's treaty rights are acknowledged in several sections of the regulations.

Comment: The entire study area must be considered as a "fishing area" since fish migrate along the entire Washington coast.

Response: NOAA recognizes that fish "know no boundaries in the sea." The fishing areas identified in the FEIS/MP only represent known locations where certain fishery activity is concentrated. The fishing areas displayed in the FEIS/MP are not related to regulatory jurisdiction in any way. They are simplified visual aids to complement the discussion of resources off the coast of Washington.

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).

Comment: NOAA should change the proposed regulation governing alteration of or construction on the seabed to "maintenance and development of approved aquaculture operations", and strike "existing prior to the effective date of these regulations." Eliminating future aquaculture

development off the Olympic Coast would preclude opportunities for both private shellfish and finfish production and for public enhancement.

Technology is being developed which would result in minimal environmental imbalance, and would afford employment for regional communities.

Response: See response to previous comment.

Comment: The Sanctuary should not regulate aquaculture activities because there are sufficient regulations in place.

Response: See response to previous comment.

Comment: The Sanctuary should provide mutually agreed upon requirements for aquaculture activities among the oyster growers of Willapa Bay.

Response: The boundary of the Sanctuary does not include Willapa Bay.

Comment: The discussion in the FEIS/MP on the impacts of aquaculture needs to be expanded and the proposal to not regulate aquaculture in the Sanctuary should be re-assessed. The FEIS/MP needs to address the use of drugs in farm-raised fish.

Response: The discussion of aquaculture within the Sanctuary is intended only to evaluate the current status of the industry in the study area—it is not intended to measure aggregate impacts. The request for expanded discussion of resources does not identify specific issues of discussion. A reassessment of aquaculture vis-a-vis the Sanctuary reveals that the industry is adequately regulated by existing state and Federal requirements. However, any discharges from such operations into the Sanctuary would be prohibited. The Sanctuary has no jurisdiction over the use of drugs in aquaculture—such determinations are under the purview of the Washington State Department of Health (WDH) and the Federal Food and Drug Administration (FDA).

Comment: All aquaculture should be banned from within the Sanctuary.

Response: See responses to previous comments regarding aquaculture.

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 MPRSA 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 MPRSA allows NOAA to assess civil penalties as high as \$100,000 for each violation. In addition, monies collected under the MPRSA 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 to the civil penalties authorized by the MPRSA 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 MPRSA, NEPA and APA.

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

Response: The only birds § 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 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;
- (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 MPRSA 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 MPRSA 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 * * *."

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

§ 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, §§ 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 MPRSA 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.

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 MPRSA (16 U.S.C. 1437(c)(1)), and for natural resource damages pursuant to section 312 of the MPRSA (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.

Beach Management Policies

Comment: NOAA should grandfather in the existing beach management policies including allowable beach driving activities.

Response: The boundary of the Sanctuary does not encompass beaches where beach driving is permitted.

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 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.

Miscellaneous

Comment: Firearms should be controlled or banned within the Sanctuary.

Response: Possession and use of firearms is regulated by State law for public safety purposes. The primary purpose of Sanctuary designation is resource protection.

Management Alternatives/Strategies

Comment: The administrative models being discussed in the Northwest Straits proposal should be considered.

Response: The administrative model identifying NOAA as the lead agency in managing the sanctuary with guidance and assistance from the SAC (which will represent State and local interests) will be implemented in the Olympic Coast National Marine Sanctuary. The administrative model which involves joint administration between NOAA and

the State of Washington was not considered for the Olympic Coast National Marine Sanctuary because the Sanctuary is predominately in Federal waters. One model suggested for the proposed Northwest Straits National Marine Sanctuary focuses on joint administration because the Sanctuary would be located entirely within State waters. NOAA will work closely with the state and counties and other Federal agencies in the administration of the Olympic Coast National Marine Sanctuary.

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: NOAA should choose management plan alternative 1 which proposes to gradually phase in program activities and staffing. Staff could be co-located with another Federal agency in Port Angeles, with satellite sites in Klaloch or La Push. National concerns with fiscal restraint support this choice. Some commenters supported management plan alternative 2 which proposes to set up the sanctuary headquarters and immediately provide full-staffing. Sanctuary headquarters should be located on the coast. The former Makah Air Force Station is one possible location.

Response: NOAA is experiencing the fiscal constraints that all Federal programs are experiencing. NOAA proposes to balance the needs for resource protection and fiscal restraint by phasing in staffing and maximizing cooperative relationships with other agencies and jurisdictions working in the area (e.g., NPS, U.S. Coast Guard, the tribes, and the USFWS) to implement the management plan. The Sanctuary manager will have an office on the Olympic Coast with administrative support facilities in Seattle.

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.

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 MPRSA, 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 § 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.

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, § 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 PPMC.

Response: The National Ocean Service (which includes the Sanctuaries and Reserves Division) and the NMFS have entered into a Memorandum of Understanding outlining the working relationship between the Sanctuary Program and the NMFS. The PPMC 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: The benefits of sanctuary designation to the fishing community and others should be clearly articulated. Additionally, connections between the regulations and resource protection should be integrated in the education plan (e.g., establishing warning signs at popular access sites to alert boaters and hikers to the effect of disturbance of pelagic birds and marine mammals.)

Response: NOAA agrees and has clarified the education goals in the Sanctuary management plan. NOAA has articulated the benefits of the Sanctuary program for the fishing community. NOAA will coordinate with the USFWS and the NPS to post warning signs around critical marine bird and mammal habitat.

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.

Issue: Informational Amendments of the DEIS/MP

Biological Amendments

Comment: The discussion of the neretic and shelf edge environments in the DEIS/MP needs to be expanded. The resource assessment must stress the biological richness of the area.

Response: The resource assessment describing the ecosystem of the Sanctuary study area has been expanded in the FEIS/MP.

Comment: Biological resources need to be discussed in terms of ecosystem interactions and not single species descriptions.

Response: NOAA has expanded the discussion to include a description of the study area from an ecosystem perspective.

Socioeconomic

Comment: The FEIS/MP must contain a socioeconomic impact study of the regulations on the affected coastal communities and Tribes. Failure to consider and mitigate these impacts violates the NEPA and Federal Trust responsibility to Indians.

Response: An economic analysis has been included within the FEIS/MP. NOAA is not promulgating regulations that will unduly burden the tribes. The regulations have provisions that recognize treaty secured rights. In addition, NOAA will consult with the Tribes when considering permits affecting proposed development activities in the Sanctuary. NOAA believes that the regulations do not conflict with the economic interests of the Tribes since the regulations offer increased protection for those natural resources critical to the tribal economy.

Comment: The Federal government should investigate the possibility of tax breaks to offset economic impacts of the management plan.

Response: NOAA's actions do not add economic burdens to the area. The issue of tax breaks should be addressed to an individual's representatives in Congress. NOAA does not have the legislative authority to address tax laws.

Supplemental Draft Environmental Impact Statement

Comment: NOAA should submit a supplemental Draft Environmental Impact Statement for the following reasons: (1) The DEIS/MP lacks a satisfactory examination of the socioeconomic impacts of the regulations on the coastal communities; (2) the DEIS/MP contains erroneous information related to port activities in Grays Harbor; (3) some information is missing, outdated, or inaccurate; (4)

inadequate definition of the unique environment deserving protection that is identified by the SEL.

Response: NOAA has determined that the matters for which an SEIS has been requested can be addressed in the FEIS/MP. The FEIS/MP addresses the socioeconomic impacts of regulations that could potentially affect the coastal communities in the alternatives and consequences section. Further, the vessel traffic section has been amended substantially to provide a detailed description of the significance of vessel traffic to the coastal communities. Additionally, the description of the marine environment under consideration has been expanded greatly.

Management

Comment: NOAA needs to address or recognize a number of current local and state regulatory controls in place within the shoreline areas.

Response: NOAA has addressed local and state regulatory controls within the shoreline areas. These controls are listed in appendix J.

The following sets forth the text of the Designation Document for the Olympic Coast National Marine Sanctuary.

Designation Document for the Olympic Coast National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and 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 Koiitlah 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 Nitinat, 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 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.

APPENDIX A.—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES.

(Based on North American Datum of 1983)

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07'45"	124°11'02"
2	47°07'45"	124°58'12"
3	47°35'50"	125°00'00"
4	47°40'05"	125°04'44"
5	47°50'01"	125°05'42"
6	47°57'13"	125°29'13"
7	48°07'33"	125°38'20"
8	48°14'46"	125°40'59"
9	48°20'12"	125°22'59"
10	48°27'49"	125°06'04"
11	48°29'59"	124°59'13"
12	48°30'19"	124°50'42"
13	48°29'30"	124°43'41"
14	48°27'50"	124°38'13"
15	48°23'17"	124°38'13"

III. 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.

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;

(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.

IV. 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 § 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 MPRSA.

Section 925.4 allows all activities except those prohibited by § 925.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 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 § 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 issued under § 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 § 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 § 925.11, the applicant complies with the requirements of § 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.

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 § 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.

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 § 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. 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.

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 § 925.5. Pursuant to paragraph (f) of § 925.5, the prohibitions in paragraphs (a)(2)–(8) of § 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 § 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 § 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 § 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 the Act. The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 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 § 925.11.

Section 925.11 states that consistent with paragraph (g) of § 925.5, the prohibitions of paragraphs (a)(2)-(8) of § 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 § 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 § 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 § 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 § 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 § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 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.

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.

V. Miscellaneous Rulemaking Requirements

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648-0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information

and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (06480141) Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard A. Roberts, room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, *Federalism Considerations in Policy Formulation and Implementation* (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS/MP was prepared for the designation and proposed regulations. As required by Section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on September 20, 1991, with comments due on December 13, 1991. Public hearings were held in Port Angeles, Seattle, Olympia, Aberdeen, Seaview and Washington, DC from November 7 to 20, 1991. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. While the prohibition on the exploration, development and

production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

Federal Domestic Assistance Catalog Number 11.429

Marine Sanctuary Program

List of Subjects in 15 CFR Part 925

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 5, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is amended as follows:

Part 925 is added to subchapter B to read as follows:

PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY

Sec.

- 925.1 Purpose.
- 925.2 Boundary.
- 925.3 Definitions.
- 925.4 Allowed activities.
- 925.5 Prohibited activities.
- 925.6 Emergency regulations.
- 925.7 Penalties for violations or regulations.
- 925.8 Response costs and damages.
- 925.9 National Marine Sanctuary permits—application procedures and issuance criteria.
- 925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
- 925.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
- 925.12 Appeals of administrative action.
- 925.13 Consultations with the state, affected Indian tribes and other affected local authorities.

Appendix A to Part 925—Olympic Coast National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 306, 307, 310 and 312 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 et seq.).

§ 925.1 Purpose.

The purpose of the regulations in this Part is 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.

§ 925.2 Boundary.

(a) The Olympic Coast National Marine Sanctuary consists of an area of 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.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./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 mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, state and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The precise boundary of the Sanctuary is set forth in appendix A to this part.

§ 925.3 Definitions.

(a) The following terms are defined for the purposes of this part:

Act means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 et seq.).

Administrator or Under Secretary means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource

Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations implementing the designation of the Sanctuary (the regulations in this part) become effective.

Federal project means any water resources development project 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.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Indian tribe means any American Indian tribe, band, group, or community recognized by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of, and includes, but is not limited to, to cause the loss of or to destroy.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other solid matter of commercial value.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Olympic Coast National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water, sediment and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the

substratum of the waters off the Olympic Peninsula, bottom formations, marine plants and algae, invertebrates, plankton, fish, birds, turtles, marine mammals and historical resources.

Take or taking means: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(2) For any other marine mammal, sea turtle or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(3) For the purpose of both paragraphs (1) and (2) of this definition, the term includes, but is not limited to, collecting any dead or injured marine mammal, sea turtle or seabird, or any part thereof; restraining or detaining any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine mammal, sea turtle or seabird.

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation, including the retrieval of fishing gear.

Treaty means a formal agreement between the United States Government and an Indian tribe.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 925.4 Allowed activities.

All activities except those prohibited by § 925.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 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 (see § 925.8).

§ 925.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 925.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) 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.*;

(iii) 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;

(iv) Engine exhaust; or
(v) dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(3) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2) (i) through (v) of this § 925.5, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) 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 as an incidental result of:

(i) Anchoring vessels;
(ii) Traditional fishing operations;
(iii) Installation of navigation aids;
(iv) 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;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by 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), 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.

(7) Flying motorized aircraft at less than 2,000 feet 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 from the coastal boundary of the Sanctuary, except 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.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(9) Interfering 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.

(b) The regulations in this part apply to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(d) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary for valid law enforcement purposes.

(e)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Except as provided in paragraph (e)(2) of this § 925.5, the prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to the following military activities performed by the Department of Defense in W-237A, W237-B, and Military Operating Areas Olympic A and B in the Sanctuary:

(i) Hull integrity tests and other deep water tests;

(ii) Live firing of guns, missiles, torpedoes, and chaff;

(iii) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and
(iv) Anti-submarine warfare operations.

New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this § 945.5 by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (e)(1).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) 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 the Department of Defense, the Department of Defense shall 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.

(f) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 925.9 or a Special Use permit issued pursuant to Section 310 of the Act.

(g)(1) The prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval 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 § 925.10 and with any terms and conditions on the exercise of such lease, permit, license, other authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(2) Members of a federally recognized Indian tribe may exercise aboriginal and

treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this Part. The Director may consult with the governing body of a Tribe regarding ways the Tribe may exercise such rights consistent with the purposes of the Sanctuary.

(h) The prohibitions in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by any lease, permit, license, or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 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. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(i) Notwithstanding paragraphs (f) and (h) of this § 925.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 925.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 925.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or 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.

§ 925.6 Emergency regulations.

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 are subject to immediate temporary regulation, including prohibition.

§ 925.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this Part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$100,000. Each day of a continuing violation constitutes a separate violation.

(b) 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.

§ 925.8 Response costs and damages.

Under section 312 of the Act, 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.

§ 925.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 925.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5, if the Director or designee finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; 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 managing 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 adjacent to the Sanctuary. 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. 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. The Director or designee may also deny a permit application pursuant to this § 925.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations. (Procedures governing permit denials for enforcement reasons are set forth in subpart D of 15 CFR part 904). In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 925.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this section for good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions for enforcement

reasons are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) 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.

(k) 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 onto 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.

(l) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 925.12.

§ 925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations—or rights to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval 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:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation,

of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 925.10; and

(3) The holder 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 to achieve the purposes for which the Sanctuary was designated.

(b) The holder of 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 of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 may conduct the activity without being in violation of § 925.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 925.10.

(c) Any holder of 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 any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by (a) (1) through (8) of § 925.5.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. A copy of the lease, permit, license, or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 925.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 925.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 925.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 925.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of permit, license, approval, other authorization or right is subject to the provisions of § 925.11.

§ 925.11 Notification and review of applications for leases, licenses, permits, or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 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:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(2) The applicant complies with the other provisions of this § 925.11;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue

a finding as to whether the activity for which an application is intended to be made is prohibited by paragraphs (a) (2) through (8) of § 925.5.

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Building 4, Silver Spring, MD 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed 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 United States' trust responsibility to the affected tribes.

(f) The Director or designee may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(h) 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 § 925.12.

§ 925.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 925.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 925.10 certification requester or a § 925.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 925.11.

(b) An appeal under paragraph (a) of this § 925.12 must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910.

(c) While the appeal is pending, appellants requesting certification pursuant to § 925.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in paragraphs (a) (2) through (8) of § 925.5 with regard to which they are requesting certification. All other appellants may not conduct their activities without being subject to the prohibitions in paragraphs (a) (1) through (9) of § 925.5.

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of

request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held,

on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 925.12 other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

§ 925.13 Consultation with the state, affected Indian tribes and other affected local authorities.

The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources. The Director shall, when requested by such

governments, enter into a memorandum of understanding regarding such consultations.

APPENDIX A TO PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07'45"	124°11'02"
2	47°07'45"	124°58'12"
3	47°35'05"	125°00'00"
4	47°40'05"	125°04'44"
5	47°50'01"	125°05'42"
6	47°57'13"	125°29'13"
7	48°07'33"	125°38'20"
8	48°14'46"	125°40'59"
9	48°20'12"	125°22'59"
10	48°27'49"	125°06'04"
11	48°29'59"	124°59'13"
12	48°30'19"	124°50'42"
13	48°29'38"	124°43'41"
14	48°27'50"	124°38'13"
15	48°23'17"	124°38'13"

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