Appendix A: Coordination with Other Programs, Plans, and Regulatory Authorities

A.1 Overview

Two major federal laws guiding the restoration of the injured natural resources and services from the *Tenyo Maru* oil spill are OPA and NEPA. OPA and its regulations provide the basic framework for natural resource damage assessment and restoration. NEPA sets forth a specific process of impact analysis and public review. In addition, the Trustees must comply with other applicable laws, regulations and policies at the federal, state and local levels. The potentially relevant laws, regulations and policies are set forth below.

In addition to laws and regulations, the Trustees must consider relevant environment or economic programs or plans that are ongoing or planned in or near the affected environment. The Trustees must ensure that their proposed restoration activities neither impede nor duplicate such programs or plans. By coordinating restoration with other relevant programs and plans, the Trustees can enhance the overall effort to improve the environment.

A.2 Key Statutes, Regulations and Policies

Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701, et seq.; 15 CFR Part 990

OPA establishes a liability regime for oil spills which injure or are likely to injure natural resources and/or the services that those resources provide to the ecosystem or humans. Federal and state agencies and Indian tribes act as trustees on behalf of the public to assess the injuries, scale restoration to compensate for those injuries and implement restoration. Section 1006(e)(1) of OPA (33 U.S.C. 2706 (e)(1)) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, (NOAA) to promulgate regulations for the assessment of natural resource damages resulting from a discharge or substantial threat of a discharge of oil. Assessments are intended to provide the basis for restoring, replacing, rehabilitating, and acquiring the equivalent of injured natural resources and services.

National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq. 40 CFR Parts 1500-1508

Congress enacted NEPA in 1969 to establish a national policy for the protection of the environment. NEPA applies to federal agency actions that affect the human environment. NEPA established the Council on Environmental Quality (CEQ) to advise the President and to carry out certain other responsibilities relating to implementation of NEPA by federal agencies. Pursuant to Presidential Executive Order, federal agencies are obligated to comply with the NEPA regulations adopted by the CEQ. These regulations outline the responsibilities of federal agencies under NEPA and provide specific procedures for preparing environmental documentation to comply with NEPA. NEPA requires that an Environmental Assessment (EA) be prepared in order to determine whether the proposed restoration actions will have a significant effect on the quality of the human environment.

Generally, when it is uncertain whether an action will have a significant effect, federal agencies will begin the NEPA planning process by preparing an EA. The EA may undergo a public review and comment period. Federal agencies may then review the comments and make a

determination. Depending on whether an impact is considered significant, an environmental impact statement (EIS) or a finding of no significance (FONSI) will be issued.
The Trustees have integrated this restoration plan with the NEPA process to comply with those requirements. This integrated process allows the Trustees to meet the public involvement requirements of OPA and NEPA concurrently. This DRP/EA is intended to accomplish partial NEPA compliance by:

summarizing the current environmental setting;
describing the purpose and need for restoration action;
identifying alternative actions;
assessing the preferred actions' environmental consequences; and,
summarizing opportunities for public participation in the decision process.

Project-specific NEPA documents will need to be prepared for those proposed restoration projects not already analyzed in an environment assessment or environmental impact statement.

Park System Resource Protection Act, 16 U.S.C. 19jj

Public Law 101-337, Park System Resource Protection Act (16 U.S.C.19jj), requires the Secretary of the Interior to assess and monitor injuries to park system resources. The Act specifically allows the Secretary of the Interior to recover response costs and damages from the responsible party causing the destruction, loss of or injury to park system resources. This Act provides that any monies recovered by the NPS may be used to reimburse the costs of response and damage assessment and to restore, replace or acquire the equivalent of the injured resources.

Clean Water Act (CWA) (Federal Water Pollution Control Act), 33 U.S.C. 1251, *et seq.*

The CWA is the principal law governing pollution control and water quality of the nation's waterways. Section 404 of the law authorizes a permit program for the disposal of dredged or fill material into navigable waters. The Army Corps of Engineers (Corps) administers the program. In general, restoration projects which move significant amounts of material into or out of waters or wetlands -- for example, hydrologic restoration of marshes – require 404 permits.
Under section 401 of the CWA, restoration projects that involve discharge or fill to wetlands or navigable waters must obtain certification of compliance with state water quality standards. Generally, restoration projects with minor wetlands impacts (*i.e.*, a project covered by a Corps general permit) do not require 401 certification, while projects with potentially large or cumulative impacts do.

Coastal Zone Management Act (CZMA), 16 U.S.C. 1451, *et seq.* 15 CFR Part 923

The goal of the CZMA is to preserve, protect, develop and, where possible, restore and enhance the nation's coastal resources. The federal government provides grants to states with federally-approved coastal management programs. The State of Washington has a federally-approved program. Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent, to the maximum extent practicable, with the enforceable policies of approved State management programs. It states that no federal license or permit may be granted without giving the State the opportunity to concur that the project is consistent with the State's coastal policies. The regulations outline the consistency procedures.

To comply with the CZMA, the Trustees intend to seek the concurrence of the State of Washington that their preferred projects are consistent to the maximum extent practicable with the enforceable policies of the state coastal program.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601, *et seq.*

CERCLA provides the basic legal framework for clean up and restoration of the nation's hazardous substances sites. Generally, parties responsible for contamination of sites and the current owners or operators of contaminated sites are liable for the cost of clean up and restoration. CERCLA establishes a hazard ranking system for assessing the nation's contaminated sites with the most contaminated sites being placed on the National Priorities List (NPL).

To the extent that restoration projects are proposed for areas containing hazardous substances, the Trustees will avoid exacerbating any potential risk posed by such substances and will undertake no actions which might constitute "arrangement for disposal of hazardous substances." At this time, the Trustees are not aware of any potential hazardous substance problem associated with the areas where proposed restoration projects will occur.

Endangered Species Act (ESA), 16 U.S.C. 1531, *et seq.*

The ESA directs all federal agencies to conserve endangered and threatened species and their habitats and encourages such agencies to utilize their authorities to further these purposes. Under the Act, the DOC through NOAA and the DOI through the FWS publish lists of endangered and threatened species. Section 7 of the Act requires that federal agencies consult with these departments to minimize the effects of federal actions on endangered and threatened species. Prior to implementation of any project potentially affecting an endangered or threatened species, the Trustees would conduct Section 7 consultations.

Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1801 *et seq*.

The Magnuson-Stevens Fishery Conservation and Management Act as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104-297) established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After EFH has been described and identified in fishery management plans by the regional fishery management councils, federal agencies are obligated to consult with the Secretary of Commerce with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

The Trustees believe that the proposed restoration projects will have no adverse effect on the EFH units defined in the Pacific Groundfish Fishery Management Plan. The projects will promote the protection of fish resources in EFH areas. Prior to implementation of any restoration projects that may potentially create a potential adverse impact to EFH, the Trustees will consult with the National Marine Fisheries Service.

Endangered Species Act and Essential Fish Habitat

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act will occur prior to any on-the-ground projects that may adversely affect listed species or habitats.

Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. 661, *et seq.*

The FWCA requires that federal agencies consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and State wildlife agencies for activities that affect, control or modify waters of any stream or bodies of water, in order to minimize the adverse impacts of such actions on fish and wildlife resources and habitat. This consultation is generally incorporated into the process of complying with Section 404 of the Clean Water Act, NEPA or other federal permit, license or review requirements.

Rivers and Harbors Act, 33 U.S.C. 401, *et seq.*

The Rivers and Harbors Act regulates development and use of the nation's navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and vests the Corps with authority to regulate discharges of fill and other materials into such waters. Restoration actions that require Section 404 Clean Water Act permits are likely also to require permits under Section 10 of the Rivers and Harbors Act. However, a single permit usually serves for both. Therefore, the Trustees can ensure compliance with the Rivers and Harbors Act through the same mechanism.

Executive Order 12898 - Environmental Justice

On February 11, 1994, President Clinton issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This Executive Order requires each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low income populations. EPA and the Council on Environmental Quality (CEQ) have emphasized the importance of incorporating environmental justice review in the analyses conducted by federal agencies under NEPA and of developing mitigation measures that avoid disproportionate environmental effects on minority and low-income populations. The Trustees have concluded that there are no low income or ethnic minority communities that would be adversely affected by the proposed restoration activities.

Executive Order 11988 -- Construction in Flood plains

This 1977 Executive Order directs federal agencies to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of Flood plains and to avoid direct or indirect support of development in Flood plains wherever there is a practicable alternative. Each agency is responsible for evaluating the potential effects of any action it may take in a flood plain.

Before taking an action, the federal agency must determine whether the proposed action will occur in a flood plain. For major federal actions significantly affecting the quality of the human

environment, the evaluation will be included in the agency's NEPA compliance document(s). The agency must consider alternatives to avoid adverse effects and incompatible development in Flood plains. If the only practicable alternative requires siting in a flood plain, the agency must: 1) design or modify the action to minimize potential harm; and, 2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the flood plain.

Model Toxics Control Act (MTCA), Ch. 70.105D RCW (1989) and Ch. 173-340 WAC (1992)

MTCA, Washington's toxic cleanup law, mandates that site cleanups protect the state's citizens and the environment. The regulations established cleanup standards, which provide a uniform, statewide approach to cleanup that can be applied on a site-by-site basis; and requirements for cleanup actions, which involve evaluating the best methodology to achieve cleanup standards at a site.

State Environmental Policy Act (SEPA), Ch. 43 RCW

Adopted in 1971, and revised several times, SEPA requires state agencies and local governments to analyze proposed projects and plans for potentially significant impacts to the environment. Regulations implementing SEPA and providing guidance for state and local governments have been adopted (CH. 197-11 WAC). Specific resource areas which must be considered under SEPA include earth, air, water, vegetation, wildlife, public health, and shorelines. The SEPA review process may be initiated at the local government level through the development application review procedures. Local regulations identifying and protecting critical or sensitive environmental areas help ensure compliance with SEPA regulations. State agencies also prepare documents in response to proposals for state agency action.

A.3 Other Potentially Applicable Laws and Regulations

This section lists other laws that potentially affect any proposed restoration activities. The statutes or their implementing regulations may require permits from federal or state permitting authorities.

Archaeological Resources Protection Act, 16 U.S.C. 470, *et seq.*
Clean Air Act, 42 U.S.C. 7401, *et seq.*
Marine Mammal Protection Act, 16 U.S.C. 1361, *et seq.*
Migratory Bird Treaty Act, 16 U.S.C. 703, *et seq.*
National Historic Preservation Act, 16 U.S.C. 470, *et seq.*
National Park Act of August 19, 1916 (Organic Act), 16 U.S.C. 1, *et seq.*
Olympic Coast National Marine Sanctuary, 15 CFR Part 922