
APPENDIX L – RESPONSES TO COMMENTS



RESPONSE TO COMMENTS

The National Oceanic and Atmospheric Administration (NOAA) conducted two public hearings to gather input on the Olympic Coast National Marine Sanctuary (OCNMS) draft management plan/environmental assessment and proposed rule during the public comment period from January 14 through March 25, 2011. All written and verbal comments received during the public comment period were compiled and grouped into general topics. Similar comments from multiple submissions have been treated as one comment for purposes of response. NOAA considered all of these comments and, where appropriate, made changes to the final management plan (FMP) and environmental assessment (EA) in response to the comments. Editorial comments on the FMP/EA were also taken under consideration by NOAA and, where appropriate, applied to the EA or FMP. These comments are not included in the list below due to their editorial nature. Substantive comments received are summarized below, followed by NOAA's response.

GENERAL COMMENTS

Comment: The collaborative nature of the OCNMS management plan review (MPR) process is appreciated. The 20 action plans in the management plan and the regulatory actions presented as Alternative B in the environmental assessment appropriately and thoroughly represent the highest priorities for OCNMS.

Response: NOAA appreciates the support it received from the OCNMS Advisory Council (SAC), Olympic Coast Intergovernmental Policy Council (IPC), interested groups, organizations and individuals in developing the DMP, and in particular the 20 action plans. NOAA also appreciates the support for Alternative B and has selected it as the basis for the final management plan.

Comment: NOAA should prioritize particular action plans, strategies, or activities and develop appropriate staffing strategies to implement the final management plan (FMP).

Response: The action plans in the FMP comprise an ambitious body of work. For that reason, prioritization of action plans and strategies in the FMP is essential. NOAA worked with the SAC and the IPC in order to develop the implementation strategy provided in Table 5 in the FMP. This implementation table categorizes strategies as high, medium and low priorities for OCNMS under three different, hypothetical budget scenarios. NOAA will use the implementation table to consider priorities for operations on an annual basis. Future organizational structure and staffing decisions will be based on this prioritization of the strategies in the FMP, as well as the skills needed to implement the FMP. Because there is uncertainty about how future funding levels will influence prioritization, NOAA did not include a specific organizational structure or staffing plan in the FMP.

Comment: The final management plan should clarify and specify that the highest priority management goal of the Olympic Coast National Marine Sanctuary continues to be, "the protection of the marine environment and resources and qualities of the Sanctuary."

Response: Resource protection is the primary objective identified in the National Marine Sanctuaries Act (NMSA) and is, therefore, the highest priority for OCNMS. The six priority management needs and the goals and objectives for OCNMS outlined in the FMP were developed collaboratively through a public process with the SAC and the IPC. The OCNMS goals and objectives are not presented in an explicitly prioritized order; they are all considered important to OCNMS in the context of resource protection.

Comment: To avoid confusion among members of the public, NOAA should make clear that there are other, ongoing NOAA regulatory actions separate from the OCNMS management plan review process.

Response: At any given time, NOAA may have a number of regulatory actions in progress, some of which may affect OCNMS. For example, the ONMS has recently proposed a rule addressing disturbances of wildlife by aircraft flying over national marine sanctuaries (75 FR 76319). Other NOAA regulatory actions include fishery management actions under the Magnuson-Stevens Conservation and Management Act, authorizations under the Marine Mammal Protection Act, or permits under the Endangered Species Act.

Comment: NOAA's regulatory reach in managing OCNMS has expanded beyond the original goal of providing greater protection to tribal treaty fisheries and subsistence resources from the harmful effects of offshore oil development and oils spills.

Response: The 1994 terms of designation for OCNMS states that the sanctuary was established for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area. The scope of regulations, as defined in the OCNMS terms of designation, and the regulations for OCNMS have not changed since 1994. The few changes to OCNMS regulations identified in this rule are within the scope of regulations defined in the OCNMS terms of designation.

Comment: NOAA should release an annual report to the public summarizing the progress made with implementation of the OCNMS management plan.

Response: NOAA agrees and plans to produce such a report.

Comment: NOAA should continue its efforts to build and strengthen its relationships with communities on the outer coast of the Olympic Peninsula, as well as collaborate with the Lake Ozette Sockeye Committee (LOSC) to assist in reducing risk factors for sockeye salmon survival. Since collaboration among groups can at times be contentious or volatile, NOAA should enlist the assistance of a professional facilitator at meetings to strengthen collaboration among key partners.

Response: NOAA agrees and intends to continue efforts in this area, as identified in multiple strategies and activities in the Community Involvement in Sanctuary Management and Community Outreach action plans included the FMP. While not an active participant, OCNMS staff have been monitoring the work of the LOSC. The Lake Ozette Sockeye

Recovery Plan is focused on terrestrial and freshwater management options. Improved understanding of marine habitat use by sockeye salmon, particularly juveniles, is important to effective management and, perhaps, recovery of this ESA listed species, and NOAA supports collaboration on related research within the boundaries of the sanctuary. Several strategies in the FMP provide flexibility to consider such collaborations over the 5-10 year implementation period for the FMP. In addition, NOAA utilizes professional facilitators on occasion, when appropriate. It is not possible, nor necessary, to use professional facilitation at all meetings.

Comment: Electronic submission should not be the primary method used for the public to submit comments on these documents because many people living on the West end of the Olympic Peninsula do not have internet access. In addition, the products and actions of the IPC and the SAC are not sufficiently transparent to the public.

Response: NOAA accepted comments by several means, including: in writing, orally at public hearings, electronic submissions, and by fax. All OCNMS SAC meetings are open to the public, as were all the SAC working group meetings and workshops that resulted in preliminary draft action plans. These meetings and workshops were announced on the OCNMS web site and periodically advertised to the email listserve developed for OCNMS MPR. One of the reasons Sanctuary Advisory Councils are an integral part of the management plan review process for all sites within the National Marine Sanctuary System is to ensure that management plans are reviewed and revised in a public forum. While the IPC meetings themselves are not required to be public, in all cases where the IPC provided recommendations for the draft management plan, these recommendations were discussed at SAC meetings, which are open to the public. Each step of the OCNMS MPR process, including meeting notes of all the SAC meetings, has been documented and is publically available on the OCNMS website.

Comment: The environmental assessment frequently confuses Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and National Environmental Policy Act (NEPA) "effects" language and conclusions.

Response: The OCNMS EA is written in conformance with the National Environmental Policy Act (NEPA)(42 USC § 4332) and NEPA regulations (40 CFR § 1500) and does not contradict or conflict with language pertaining to adverse impacts or effects contained in either the Endangered Species Act or Marine Mammal Protection Act. Phrasing similar to threshold language of the ESA and MMPA was used in the EA but was not used in the context of characterizing impacts.

Comment: The Desired Outcome stated at the beginning of each sub-plan in the OCNMS management plan should be more specifically tailored to a five- or ten-year goal statement where one could measure progress or success, and direct efforts for OCNMS, as well as for partners and collaborators, as future funding becomes available.

Response: The Desired Outcome statements are intended to be a broader characterization of the end result that OCNMS hopes to achieve with each action plan. The desired outcomes

are intended to tie each action plan to the goals and objectives outlined at the beginning of the management plan. The performance measures identified in the FMP are intended to be the specific measures of progress or success.

Comment: NOAA should pursue inter-governmental agreements or memoranda of agreement (MOAs) to declassify appropriate U.S. Navy maps and bathymetric data.

Response: NOAA agrees and has edited two strategies to address the issue of U.S. Navy bathymetric data acquisition: Collaborative and Coordinated Sanctuary Management Action Plan Strategy, Strategy CCM7: United States Navy, Activity B; and Habitat Mapping and Classification Action Plan, Strategy MAP1: Regional Coordination, Activity C.

OIL SPILL PLANNING AND PREVENTION

Comment: NOAA should develop a marine nearshore assessment to determine if sockeye populate the region, and improve the regional Geographic Response Plans that direct initial response to oil spills.

Response: While conducting a nearshore assessment of sockeye salmon populations is beyond its current capacity, NOAA is interested in participating in a collaborative effort to conduct such a study. The Spills Prevention, Preparedness, Response and Restoration Action Plan, Strategy SPILL3: Regional Planning and Training Exercises, Activity E has been modified to seek improvements to geographic response plans in the area of threatened and endangered species protection.

Comment: NOAA should remove the activity in the management plan that requests that U.S. Coast Guard (USCG) conduct a vessel traffic risk study of the western Strait of Juan de Fuca. USCG has reviewed this issue and found aids to navigation adequate in this area.

Response: The recommendation for NOAA to encourage the USCG to conduct a vessel traffic study was made by consensus by the Spills Prevention, Preparedness, Response and Restoration Working Group. NOAA considers the review of maritime safety within and adjacent to sanctuary boundaries to be an ongoing priority. The frequency at which specific reviews and studies should be undertaken will be a subject of ongoing discussions between NOAA and USCG.

Comment: NOAA should/should not make the Area to be Avoided (ATBA) mandatory.

Response: The ATBA is currently a voluntary vessel traffic measure with a high compliance rate (98.9% compliance in 2009) that is routinely monitored by NOAA. Based on the high level of compliance, NOAA elected to not support the alternative in the EA (alternative C) that would pursue a mandatory ATBA. If compliance rates were to decrease significantly, NOAA would revisit this issue after consulting with the USCG and other partners. NOAA supports alternative B, which would maintain the voluntary status of the ATBA based on high compliance rates.

SANCTUARY SCIENCE

Comment: NOAA should archive regularly collected satellite data on sea surface temperature and primary productivity.

Response: The collection and archiving of satellite data is the responsibility of NOAA's National Environmental Satellite, Data, and Information Service (NESDIS). Satellite data products including SST and primary productivity indicators (chlorophyll a) are currently archived at NESDIS. Most archival data are found in the CLASS system. (Comprehensive Large Array-data Stewardship System) at <http://www.class.ncdc.noaa.gov/saa/products/welcome>.

Comment: NOAA should utilize backpackers to help with monitoring efforts in the sanctuary (e.g., pass out marine mammal stranding cards, where backpackers could report information).

Response: NOAA believes in the value of citizen science and is a partner in the Coastal Observation and Seabird Survey Team (COASST), through which volunteers survey designated segments of the coast on a monthly basis. COASST volunteers receive training in the monitoring methods to ensure the accuracy and utility of data to resource managers and scientists. NOAA does work with Olympic National Park (ONP) staff to provide information at trail heads that provides information on how to report marine mammal strandings. NOAA is a partner in the Northwest Marine Mammal Stranding Network, which documents and coordinates response to marine mammal strandings. NOAA participates in stranding network trainings that are provided to ONP's coastal rangers and are open to all interested parties.

Comment: NOAA should include a representative from the Northwest Fishery Science Center in the efforts to develop a list of indicator species for OCNMS.

Response: NOAA agrees. In strategy ECO9: Ecosystem Processes in the FMP, Northwest Fisheries Science Center is identified as a key partner in efforts to identify indicator species for the sanctuary area.

NATURAL RESOURCE MANAGEMENT

Comment: The management plan should focus less on collection of more data and should contain more explanation of how NOAA will implement ecosystem based management in OCNMS in the context of the Coastal and Marine Spatial Planning.

Response: During development of the management plan, NOAA determined that data collection is a priority to support EBM implementation because data on natural resources in the sanctuary is still scarce. The FMP directs NOAA to work with its partners over the coming years to determine how to implement EBM in the sanctuary region. Collection and analysis of data on sanctuary resources are important steps in that direction. Implementation of EBM needs to occur on a scale larger than the sanctuary and will require collaboration between NOAA, the Coastal Treaty Tribes, the State of Washington, and other partners.

Coastal and marine spatial planning (CMSP), as discussed in the FMP, is being implemented on a statewide and regional scale. CMSP is a data-dependent process that will be improved by more comprehensive characterization of natural resource distribution, condition, and use.

Comment: NOAA should consider measures such as time/area closures, take limits on prey species, and restrictions on fishing activities specifically during the EFH groundfish 5-year review.

Response: In the FMP, NOAA does recognize the ecological importance, sensitivity to disturbance, and slow recovery potential of biogenic habitats, such as deep sea corals and sponges, and is committed to their protection. The Habitat Mapping and Classification Action Plan in the FMP supports seafloor habitat mapping, including identifying where biogenic habitats occur and sharing these data with other natural resource managers. The Habitat Protection Action Plan in the FMP supports OCNMS staff participation in the Pacific Fishery Management Council (PFMC) process to identify and review essential fish habitat (EFH) and habitat areas of particular concern (HAPC) for Pacific Coast groundfish. This action plan also supports collaborative development and evaluation of recommendations for HAPC sites and EFH conservation areas.

Comment: NOAA should define essential fish habitat. Where is it for each species and what are the limitations of use within it?

Response: Essential fish habitat (EFH) is defined in the Magnuson-Stevens Fishery Conservation and Management Act as ‘those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity’ (16 U.S.C. § 1802(10)). This Act requires NMFS to assist the regional fishery management councils in the implementation of EFH in their respective fishery management plans. This Act also requires Federal agencies to consult with NMFS on any federal action that may have an adverse effect on EFH. A designated groundfish EFH area in OCNMS, named Olympic 2, is identified in the FMP, and non-tribal bottom trawlers are prohibited from fishing within Olympic 2. The water column in the sanctuary is also designated EFH for Chinook, Coho, and Pink salmon and some coastal pelagic species (anchovies, sardines, squid, and mackerel). There are no specific fishery management limitations associated with these water column EFH designations.

Comment: Conservation issues, including any national ONMS initiatives, that may require modification of fisheries regulations should be referred to the Pacific Fishery Management Council for appropriate action.

Response: In the event modification to Federal fishery regulations is necessary, NOAA will bring the issue to the PFMC’s attention through established processes. At this time, there are no national initiatives by the ONMS that would impact Pacific Fisheries Management Council-managed species.

Comment: NOAA should address in the management plan how the access to fishing and shellfishing (in this case, the intertidal zone that was deeded to the Federal government) might be regulated to adhere to state of Washington requirements.

Response: NOAA is not proposing to alter fisheries management through this FMP, therefore this issue is beyond the scope of this rulemaking.

Comment: OCNMS’ goals of protecting, conserving, and enhancing sanctuary resources should include the seascape, lightscape and soundscape of OCNMS for this and future generations as it relates to the overall recreational hiking experience along that portion of the Washington Coast Trail adjacent to the sanctuary.

Response: As part of the original OCNMS designation in 1994, NOAA described the characteristics of the sanctuary that made it an area of special national significance. One such characteristic was, “its rugged and undeveloped coastline”. In addition, the National Marine Sanctuaries Act identifies both recreational and esthetic qualities as important characteristics of national marine sanctuaries. NOAA will consider impacts on these characteristics in its review of permit applications for activities in OCNMS. The coastal wilderness of Olympic National Park and the Washington Islands National Wildlife Refuges are additional federal designations that recognize and protect the Olympic Coast as a special and unique area in the continental United States.

VISITATION AND RECREATION

Comment: NOAA should increase public awareness of the sanctuary resources by making use of the natural beauty found above and below the water in a newsletter or a website.

Response: The desired outcomes of the Visitor Services Action Plan are to improve awareness of the sanctuary and ocean issues, and to provide an enriched and extended coastal travel experience. This action plan supports an update of the OCNMS website and use of additional appropriate technologies, such as social networking, webcasts, and smartphone applications.

Comment: NOAA should develop a southern information center in Aberdeen.

Response: The Visitor Services Action Plan outlines efforts to assess locations for additional visitor information centers. Planning efforts proposed under this action plan will include market feasibility, assessment of potential visitor traffic, and a survey of education and interpretation thematic opportunities.

MILITARY ACTIVITIES IN THE SANCTUARY

Comment: The U.S. Navy is committed to considering the use of biodegradable components for military expendable materials during training and RDT&E activities to the extent that such materials are available, will meet mission requirements, and are practicable.

Response: NOAA appreciates the U.S. Navy’s efforts in this area. NOAA has agreed to participate in a U.S. Navy-led initiative to develop biodegradable alternatives for expendable materials used in marine environments.

Comment: No summary of Navy research, development, testing and evaluation, and fleet training activities is provided in the document, and NOAA does not set out any position on the activities of the U.S. Navy.

Response: The Navy EISs for the Northwest Training Range Complex and the Keyport Range Complex Extension were under development simultaneously with the OCNMS DMP/DEA. Both Navy EIS documents were finalized in 2010 and they provide the most detailed information publically available on Navy activities and their impacts on resources in the sanctuary. NOAA does not have additional information on Navy activities in the sanctuary beyond what has been presented to the public in these documents. The characterization of Navy activities in the sanctuary was expanded in the OCNMS FMP/EA, and references were updated. In addition, the issues that NOAA raised with the Navy, primarily focused on potential impacts to biogenic seafloor habitats and discharge of expendable materials, were noted in the FMP/EA. NOAA supports the mission of the U.S. Navy and understands the importance of their research and training activities. NOAA believes that, when possible, it is preferable that these activities take place outside of national marine sanctuaries. In cases where this is not feasible, NOAA seeks to work with the Navy to ensure that their activities are carried out in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources and qualities.

Comment: Section 6.4.5 of the EA should explain that the proposed action evaluated in the EIS for the Northwest Training Range Complex (NWTRC) did not trigger the consultation requirements of Section 304(d) of the National Marine Sanctuaries Act.

Response: NOAA recognizes that the Navy prepared a detailed Environmental Impact Statement (EIS) addressing its activities within the NWTRC, and during the process to develop this EIS, the Navy responded to written comments submitted by NOAA.

Section 304(d) of the National Marine Sanctuaries Act (NMSA) requires federal agencies whose actions are “likely to destroy, cause the loss of, or injure a sanctuary resource” to consult with NOAA before taking action. NOAA found that the Navy’s proposed activities within the NWTRC increased in scope and intensity the activities previously undertaken by the Navy and represented increased adverse impacts to sanctuary resources. NOAA recognizes that despite differing opinions of the applicability of section 304 (d), the Navy has been willing to meet with NOAA to discuss the effects of Navy activities on sanctuary resources, and has responded in writing to reasonable and prudent alternatives recommended by NOAA.

Comment: NOAA should express concern regarding the significant expansion of activities of the U.S. Navy in the sanctuary in order to fulfill its public trust responsibilities.

Response: Both the Navy and NOAA have public trust duties to public resources. NOAA commented on the Navy EISs through interagency consultation. Throughout development of the Navy’s documents NOAA worked with the Navy to ensure the protection of sanctuary resources. NOAA recognizes the Navy’s cooperation during consultation with NOAA

pursuant to section 304(d) of the NMSA on the Navy's proposed expansion of the Keyport Range Complex.

Comment: The rule should be amended to reflect the fact that authorized Navy activities occur in all of the areas described in the Navy's comment letter as authorized by 15 CFR 922.152(d).

Response: 15 CFR 922.152(d) references geographically specific areas and identifies a suite of Department of Defense activities that are exempt from sanctuary regulations. These exceptions do not apply to the entire sanctuary. If the Department of Defense has a need to extend the geographic extent of these exceptions or wishes to add new activities to the identified list in the regulations, NOAA would consider such changes per the provisions in 15 CFR 922.152(d)(1)(ii).

ACOUSTICS

Comment: The EA's conclusion that there would be a very low likelihood of adverse effects to marine life from use of the common echo sounder does not reflect the best available science.

Response: NOAA reassessed its analysis, corrected inaccuracies, and provided additional information in the FMP/EA. Whereas sound produced by hydrographic survey equipment is detectable by some marine mammals, NOAA concluded there is very low likelihood of adverse effects to marine life from use of this equipment based on the low intensity level and rapid attenuation of the sounds, limited area of sonification, and use of frequencies that are beyond peak hearing ranges for most marine mammals.

Comment: The EA, in particular Table 17, which does not identify its source of data, does not agree with the best scientific data available in Southall et al. 2007.

Response: NOAA reassessed its analysis, corrected inaccuracies, and provided additional information in the FMP/EA. Southall et al. (2007) does not provide hearing range limits for individual species but combines cetaceans into three functional hearing groups: low-frequency, mid-frequency, and high-frequency cetaceans. The revised EA incorporates analysis based on functional hearing groups identified in Southall et al. (2007) and does not include Table 17 or statements on the hearing ranges of individual species.

OVERFLIGHT REGULATION

Comment: Any mandate or requirement on overflights must be enacted by the FAA following the standard rulemaking process.

Response: The existing overflight regulation for OCNMS has been in place since the sanctuary's creation in 1994. NOAA is not making any changes to the overflight regulation in the rulemaking associated with the OCNMS FMP/EA. The purpose of the overflight restriction zone is to minimize disturbance to wildlife from low flying aircraft. Conservation of wildlife populations is within the authorities of the NMSA. This regulation is consistent with the FAA Advisory that applies to Department of the Interior lands on the outer coast of

Washington, but it is not redundant with any FAA regulation. There is a separate rulemaking associated with West Coast sanctuaries overflight regulations (75 FR 76319) that was developed by NOAA in collaboration with the FAA. NOAA has worked with the FAA to ensure that the West Coast sanctuaries regulations are consistent with FAA regulations and can be included on FAA aeronautical charts. FAA has supported this effort.

Comment: The Olympic National Park (ONP) should be afforded the same exemption to the overflight regulation that is afforded to local Indian tribes.

Response: The current exception in 15 CFR 922.152(a)(6) was placed in the original 1994 OCNMS regulations at the request of the Indian Tribes adjacent to the sanctuary to ensure that the Indian Tribes have access to reservation lands. The overflight regulation does not prevent staff of the Olympic National Park to access park land; therefore, NOAA does not believe that an exception for the ONP is necessary. It is important to note that the OCNMS overflight restriction zone does not apply to activities necessary to respond to emergencies threatening life, property or the environment (15 CFR 922.152(b)) or to activities necessary for valid law enforcement purposes (15 CFR 922.152(c)).

VESSEL DISCHARGE REGULATION

Comment: Cruise ship discharges should be banned in OCNMS, as proposed under alternative B.

Response: NOAA has selected alternative B as the preferred alternative, which includes a ban on cruise ship discharges, but has modified its analysis in the FMP/EA based upon comments received.

Comment: The proposed regulation unfairly targets cruise ships and not other large vessels.

Response: Cruise ships are a unique class of vessels that generate wastewater effluents in very large volumes and types that are unique in the maritime industry. There is widespread precedent for discharge regulation of cruise ships as a distinct vessel class on the West Coast of the U.S. (i.e., states of California, Washington, and Alaska) and nationally (i.e., in the Environmental Protection Agency Vessel General Permit).

Comment: NOAA should select the vessel discharge regulation proposed under alternative C, which extended the discharge ban to all large vessels traveling through OCNMS.

Response: Alternative C considered a broader prohibition of discharges from additional vessel classes. While a discharge ban on all large vessels would reduce the volume of wastewater discharged to the sanctuary and would avoid singling out one industry (i.e., cruise ships) for regulation, alternative C was not selected as the preferred alternative for addressing vessel discharges because vessels other than cruise ships generate a significantly smaller effluent discharge volume in comparison to cruise ships. Cruise ships carry numerous passengers, whereas most other large vessels traversing or working in the sanctuary have few passengers, if any, and small crews. Additionally, there are specific, non-regulatory actions

proposed in the actions plans that would address discharges from other types of vessels. NOAA plans to continue to assess potential impacts of vessel discharges and will reevaluate OCNMS regulations during the next review of its management plan and regulations, or sooner if significant issues associated with vessel discharges are identified.

Comment: The analysis of effects of cruise ship discharge on the sanctuary environment that is provided in the draft EA and proposed rule is inadequate, inaccurate and overlooks several major issues related to dilution, the use of Advanced Wastewater Treatment Systems (AWTS), and the level of current research available on the environmental impacts of cruise ship discharges.

Response: NOAA corrected inaccuracies and revised the analysis of cruise ship discharges to incorporate additional information and research findings in the EA. Changes were also incorporated into the preamble to the final rule but NOAA has retained the cruise ship discharge prohibition in the final rule. NOAA agrees that properly functioning AWTS produce effluent with lower contaminant loads than effluent from traditional marine sanitation devices (MSDs). NOAA's analysis revealed, however, that AWTS are not always functioning properly and are not consistently used on cruise ships where they are installed. NOAA contends that the most effective protection for water quality in the sanctuary is achieved through the cruise ship discharge prohibition included in the proposed rule. Analysis in the EA indicates that this prohibition has a negligible effect on the industry, given the average transit time of 1.2 hours through the sanctuary and current industry practice to avoid discharges into sanctuary waters.

Comment: The proposed rule is inconsistent with Executive Order 13563 because the cost/benefit analysis of the proposed cruise ship discharge regulation is inadequate.

Response: In the FMP/EA, NOAA modified the analysis of environmental and socioeconomic impacts and costs of the proposed ban on cruise ship discharges in OCNMS. There is essentially no operational cost to the industry from the implementation of this regulation. The regulation generates the benefits of regulatory clarity, regulatory consistency among marine sanctuaries on the west coast, and a more precautionary management approach to a marine protected area of national significance. The regulation is consistent with Executive Order 13563.

Comment: The qualifier "clean" as defined in section 922.151 effectively establishes an unattainable "non-detect limit" for any constituent discharged by a cruise ship.

Response: NOAA agrees that the term "clean" needs to be better explained and has therefore added a definition of "harmful matter" in the final rule. The definition of "harmful matter" is consistent with the definitions used at other national marine sanctuaries. NOAA believes that this additional clarification addresses the concern regarding the feasibility of the proposed regulation.

Comment: NOAA should consider an approach that provides for black water and gray water discharges that are treated to levels that are scientifically acceptable.

Response: Establishment of performance standards for cruise ship discharges in OCNMS would create an impractical level of regulatory and enforcement complexity applying to a minor portion of the vessels' operating area. For example, performance standards, in the form of effluent limitations, have been established by the state of Alaska. Alaska regulations allow discharge only from AWTS, not traditional MSDs, and include differing limits (maximum values for a variety of effluent parameters) based on the type (manufacturer) of AWTS and operation of the vessel (in transit > knots or not). These regulations also define differing sampling/analysis frequencies for various parameters. Because cruise ships have an average transit time of 1.2 hours in OCNMS, performance standards for discharges to sanctuary waters are not warranted. The EPA and the state of Washington set water quality standards that apply to sanctuary waters within the state's waters. However, there are currently no standards that apply to sanctuary waters beyond 3 miles which are federal waters.

Comment: NOAA should make sure that this regulation, including the definition of cruise ship, is consistent with other regulations, including the EPA's Vessel General Permit.

Response: National marine sanctuaries are marine protected areas of national significance and often have regulations that are more restrictive than other areas. This is consistent with the mandate of the NMSA. The FMP/EA identifies a complex set of international, federal, and state vessel discharge regulations with inconsistent requirements that differ based on various factors, including country of registration, wastewater stream, treatment systems used, monitoring implemented, operation of the vessel, and location of the discharge. Various definitions for cruise ship are used in federal and state regulations. The EPA in the Vessel General Permit (VGP) provides definitions for medium cruise ships (authorized to carry 100 to 499 people for hire) and large cruise ships (authorized to carry 500 people or more for hire). VGP provisions cover only portions of the sanctuary within 3 miles from shore. U.S. Coast Guard regulates cruise ships as passenger vessels over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours. Given the inconsistency among the various definitions, NOAA will continue to use the definition of cruise ships established in the regulations of the four national marine sanctuaries off the coast of California.

Comment: The description of allowed discharges in the proposed cruise ship discharge regulation does not account for all non-discretionary discharges, which ban discharges that cannot be terminated from vessels (e.g. leachate from anti-fouling hull coatings, cathodic protection, etc.).

Response: The cruise ship discharge regulation does not prohibit leachate from anti-fouling hull coatings or discharges from cathodic protection. Anti-fouling hull coatings are regulated as pesticides by the EPA. NOAA considers such leachates to be water generated by routine vessel operations, and as such they are an allowable discharge in OCNMS regulations (922.152(a)(2)(i)(C)).

Comment: NOAA should not prohibit discharging or depositing material from beyond the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality.

Response: Activities taking place beyond sanctuary boundaries are subject to this regulation only if the discharge injures a sanctuary resource or quality within the sanctuary. This is not a new regulation and has been in place since 1994.

Comment: NOAA should stay abreast to the routes of cruise ships and if an area of the sanctuary is scheduled to receive an immense amount of traffic, NOAA should intervene and attempt to redirect the routes.

Response: NOAA is aware of cruise ship traffic patterns within the sanctuary and monitors it routinely through the Area To Be Avoided (ATBA) compliance monitoring. Assuming that cruise ships continue their high rate of compliance with the voluntary ATBA, cruise ship routes will remain well offshore where deep and dynamic marine waters will mitigate impacts of discharges. As they transit through the northern waters of the sanctuary at the western entrance to the Strait of Juan de Fuca, cruise ships follow established vessel traffic lanes that are designed to facilitate safe passage of large commercial vessels. NOAA will continue to monitor cruise ship traffic patterns, to evaluate practices, and to assess impacts on the environment.

CULTURAL AND HISTORICAL RESOURCES

Comment: NOAA should commit to a programmatic agreement (PA) to address Section 106 of the NHPA compliance in the management plan.

Response: NOAA has committed to developing a programmatic agreement in the FMP (Maritime Heritage Action Plan; Strategy MH1: Cultural Resource Conservation; Activity C). NOAA agrees that the components identified in the comment should be incorporated into this programmatic agreement. NOAA has met requirements under Section 106 to ensure that its FMP is in compliance with the National Historic Preservation Act.

Comment: The protection of cultural resources needs to be incorporated into oil spill response planning, training and GRPs.

Response: These issues are addressed within the context of the Northwest Regional Response Team and the Northwest Area Contingency Plan. NOAA supports consideration of additional approaches to ensure the protection of cultural resources during oil spill response, planning and geographic response plans.

Comment: NOAA needs to assure that cultural resources data is conveyed to the Washington State Department of Archaeology and Historic Preservation (DAHP) and other consulting tribal governments in a format that is compatible with DAHP GIS standards.

Response: NOAA concurs and has edited Maritime Heritage Action Plan, Strategy MH1: Cultural Resource Conservation, Activity B to address the need to develop uniform guidelines/protocols for cultural resource data collection and sharing.

TREATY TRUST RESPONSIBILITY

Comment: NOAA should develop work protocols for government-to-government consultation.

Response: While general tribal consultation procedures are documented in section 2.4 of the FMP/EA, NOAA also looks forward to working with individual Coastal Treaty Tribes to develop more specific, individually defined tribal consultation procedures beyond those outlined in the FMP. To support this effort, NOAA added an activity under the Collaborative and Coordinated Sanctuary Management Action Plan, Strategy CCM2: Coastal Treaty Tribes.

Comment: The DMP section on Treaty Trust Responsibility is too heavily focused on treaty rights and the protection of natural resources co-managed by the Tribes and the United States, at the expense of other important tribal interests.

Response: Section 2 focuses on treaty rights and NOAA's fulfillment of U.S. treaty obligations within its statutory mandate and as recommended by the Olympic Coast Intergovernmental Policy Council and OCNMS Advisory Council. This chapter was based on substantial work by members from the four Coastal Treaty Tribes and NOAA. Thus, NOAA did not alter the focus or scope of this chapter because specific guidance was not provided by the Coastal Treaty Tribes.

Comment: The regulation requiring consultation with the tribes should formalize the co-management status of the coast tribes. The Makah Tribal Council proposes that 922.154 be modified.

Response: NOAA recognizes our responsibilities to consult with each Coastal Treaty Tribe on a government-to-government basis. This responsibility is documented in several places in the OCNMS FMP and exists regardless of language in OCNMS regulations. Editing the regulations would not substantively change the requirement to consult. NOAA did not modify this clause in OCNMS regulations.

Comment: When a Coastal Treaty Tribe is involved in a project permitted by another agency, NOAA should be required to consider its fiduciary obligations when deciding whether and how to object or condition that project. The Makah Tribal Council proposes that 922.152 (g) be modified.

Response: NOAA did not propose changes to this provision in the January 2011 proposed rulemaking; therefore, a separate rulemaking process would be required to modify this section of OCNMS regulations. Because case law supports the protection of treaty rights and resources when a federal agency is issuing or authorizing permits, as a matter of policy, NOAA will consider and respond to a tribal government's recommendations when evaluating

permit authorizations. NOAA will consider this change during a future review of regulations.

PERMITTING

Comment: Requiring a tribe to be an applicant for a permit from NOAA does not adequately reflect its sovereign status.

Response: NOAA does not agree that the requirement to apply for a permit to conduct a prohibited activity does not adequately reflect the sovereign status of an American Indian Tribe. All governmental entities and agencies, federal, state and tribal, are required to obtain a permit to conduct an activity within the sanctuary that would otherwise be prohibited. NOAA issues permits to the sanctuary superintendent to conduct research and other activities that involve prohibited activities such as seafloor disturbance or anchoring. Being an applicant for a permit does not reflect upon the sovereignty of a tribal government and does in fact reflect an equal footing with federal and state agencies including NOAA. It is also important to note that 15 C.F.R. 922.152 (f) specifically recognizes that the prohibited activities in sanctuary regulations do not apply to the exercise of treaty-secured rights.

Comment: Requiring a tribe to be the sole applicant for a sanctuary permit would effectively eliminate projects that require partners with technical expertise and greater financial resources.

Response: NOAA agrees that language in the preamble to the proposed rule created the inappropriate impression that a tribe had to be the sole applicant for a permit in this category. For the final rule, preamble language was edited to reflect that a permit can be issued to a designated representative of a tribe or with a tribe as the sole applicant or a co-applicant. In addition, NOAA expanded the list of activities eligible for this permit category to include those proposed by the Makah Tribal Council.

Comment: The need for the proposed change to the tribal welfare provision of the sanctuary regulations is not adequately explained. The FMP/EA should address the Makah Bay wave energy project or recognize that the coast tribes may prefer jointly sponsored projects that require resources from outside the tribes.

Response: NOAA has modified the preamble to the final rule to more clearly reflect the basis for this regulatory change, a concern that an entity other than a tribal government could apply for a tribal welfare permit without an explicit agreement with or participation of the American Indian tribe. NOAA also added information regarding the Makah Bay wave energy project in Section 6.4.4 of the EA.