

**Memorandum of Agreement
Between the**

**NOAA National Marine Sanctuary Program
and
The Hoh Tribe
The Makah Tribe
The Quileute Tribe and
The Quinault Indian Nation
and The State of Washington**



January 30, 2007

Preamble

This Memorandum of Agreement (MOA) is between governments and governmental agencies with shared jurisdictional interests over the waters, activities or resources within the boundaries of the Olympic Coast National Marine Sanctuary (OCNMS). The Parties to this MOA are the Hoh Indian Tribe, Makah Indian Tribe, Quileute Indian Tribe, Quinault Indian Nation (collectively the "Coastal Treaty Tribes"), the State of Washington, and the National Marine Sanctuaries Program (NMSP) of the National Oceanic and Atmospheric Administration (NOAA).

The marine environment off the Olympic Peninsula of the State of Washington is among the most pristine marine ecosystems of the United States. These waters are essential habitat for a wide variety of marine birds and mammals, some of which are threatened or endangered species. In addition, the Olympic Coast ecosystem supports important fishery resources, including several salmon species, groundfish and shellfish. These resources form an economic base for many coastal communities and are essential to the Coastal Treaty Tribes' economy and culture.

In 1994, the Olympic Coast National Marine Sanctuary was designated by the NOAA in fulfillment of its mission articulated in the National Marine Sanctuaries Act (NMSA). At the time of sanctuary designation, there were significant concerns that the search for fossil fuels on the Outer Continental Shelf would threaten the Olympic Coast ecosystem. In the six years of public process leading up to the designation of the OCNMS, many public and private entities worked together to develop a comprehensive management plan to strengthen existing resource protections for this unique environment.

The 1994 designation document established the role and responsibilities of the OCNMS. The OCNMS designation document reflects the understanding that the primary mandate for the regulation and management of fish stocks for a healthy fishery rests with existing fishery management agencies and will be in accordance with US v. Washington and other applicable law. The NMSP has a mandate under the NMSA to protect all sanctuary resources on an ecosystem-wide basis. OCNMS research will focus to enhance the understanding and protection of the marine ecosystem, including fisheries and fish habitat, and to address management needs within the boundaries of the sanctuary.

Therefore, the Coastal Treaty Tribes, the State of Washington and the National Marine Sanctuary Program, each having responsibility for regulation of activities and management of the marine resources within the boundaries of the OCNMS, establish the Olympic Coast Intergovernmental Policy Council (Policy Council) to guide and direct the OCNMS in fulfilling its obligation to ensure coordinated and comprehensive management of the OCNMS.

I Purpose

The purpose of this MOA is to provide for the formation of an Intergovernmental Policy Council which will provide an effective and efficient forum for communication and exchange of information and policy recommendations regarding the management of the marine resources and activities within the boundaries of the OCNMS. Its role is to bring together state, federal and tribal governments for timely policy discussions, planning management initiatives, and to provide management direction to the OCNMS. The parties intend that the MOA will allow them to better manage the marine resources within the boundaries of the Olympic Coast National Marine Sanctuary through integrated management activities and collaborative relationships.

II Goals

The goals of this MOA are to:

- A. Enhance intergovernmental relationships between the parties through the creation of a Policy Council;
- B. Improve communication among the parties towards identifying common goals and reaching consensus on management priorities within the boundaries of the OCNMS for the protection and management of natural resources and the promotion of educational opportunities and scientific research.

III Authorities

- A. The NMSP enters into this MOA under the authorities governing the management of marine sanctuaries including, but not limited to, the National Marine Sanctuaries Act (16 USC 1431 et seq.), the Treaties of Neah Bay and Olympia, and the federal trust and consultation responsibilities as articulated in such documents as the Executive Order on Consultation and Coordination with Indian Tribal Governments 13084 (May 14, 1998), now supplanted by EO 13175 (November 6, 2000), the Executive Order on Federalism 13132 (August 4, 1999), the Secretarial Order on American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997), the American Indian and Native Alaska Policy of the U.S. Department of Commerce (March 30, 1995), and the Presidential Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994), and related policy statements.
- B. The Coastal Treaty Tribes enter into this MOA in accordance with their inherent sovereignty, the Treaties of Neah Bay and Olympia, and under the authority of their respective Tribal constitutions.
- C. The State of Washington enters into this MOA in accordance with its inherent sovereignty and the Centennial Accord Between the Federally Recognized Indian Tribes in Washington State and the State of Washington, as reaffirmed by the Governor's Proclamation of April 28, 2005.

IV Agreement and Responsibilities

- A. The Parties will support the development and functioning of an Intergovernmental Policy Council whose members are the non-federal governmental entities with regulatory jurisdiction over activities or marine resources within the OCNMS in accordance with the attached Charter. The Policy Council will initially be composed of the State of Washington, and each of the four Coastal Treaty Tribes. Additional governmental agencies may be invited to participate as non-voting representatives to the Policy Council if all existing Policy Council members agree. The Charter of the Policy Council is attached as Appendix A.
- B. The Director of the NMSP will meet with the Policy Council at least once each calendar year. The OCNMS Superintendent will participate in the discussions and deliberations of the Policy Council concerning policy planning, management initiatives, and direction regarding marine resources in the sanctuary.

- C. The Policy Council will strive to reach consensus on topics of mutual concern and interest including:
1. The identification and evaluation of emergent or critical issues involving activities within the OCNMS, use of the resources located within the OCNMS, and the impact of NMSP decisions on such resources;
 2. The NMSP management plan for the OCNMS;
 3. Science and research programs undertaken within the OCNMS;
 4. Education and outreach programs undertaken by NMSP within the OCNMS; and
 5. Issues and concerns regarding cultural resources and traditional knowledge of the marine ecosystem.
- D. Each Party is accountable for its implementation of this MOA and will strive to ensure that all communication among the Parties is conducted in the spirit of this MOA. The Superintendent of the OCNMS will ensure that the appropriate sanctuary personnel are known to the Policy Council and that all communication with the members of the Policy Council is conducted in the spirit of this MOA. The Coastal Treaty Tribes and the State of Washington will in turn ensure that the relevant state and tribal government personnel are known to the Superintendent of the OCNMS and that all communication between state and tribal officials and the Superintendent and staff of the OCNMS is conducted in the spirit of this MOA.
- E. The NMSP and OCNMS will ensure that the Policy Council has an opportunity for consultation and consideration of any proposed NMSP permit or other action that potentially affects treaty rights or resources within the OCNMS in addition to any public notice and comment provided for under federal law. Protocols and related documents may be developed to address timely notice and response and other practical concerns.
- F. The Parties recognize that implementation of this MOA will enhance the success of the management of the marine resources and ecosystems of the Olympic Peninsula and the marine stewardship of the OCNMS, the State of Washington and Coastal Treaty Tribes.
- G. While the NMSA and other statutory authorities designate NOAA as the manager of the marine resources of the OCNMS, the Director of the NMSP and Superintendent of the OCNMS recognize that the Coastal Treaty Tribes are the appropriate governmental entities to manage their lands, treaty resources, and the activities of their members exercising treaty rights at their usual and accustomed grounds and stations (co-managed with the State of Washington or the United States, as appropriate). The Director and Superintendent acknowledge that each Coastal Treaty Tribe values and exercises responsibility for management of its respective Indian lands, exercise of tribal treaty rights, treaty resources, and tribal member activities. Accordingly, to the extent consistent with applicable federal law, the Director and Superintendent will give deference to tribal conservation and management plans that govern Indian lands, resources and tribal activities at usual and accustomed grounds and stations and shall address the resource management needs of tribal treaty resources.
- H. The NMSP will be responsible for supporting the operation of the Intergovernmental Policy Council and the participation, including travel and associated technical support, of each of the Coastal Treaty Tribes to the extent funds and other resources are available.

V Amendment, Review and Termination

This MOA may be amended at any time only by written mutual consent of the parties.

This MOA will become effective upon the signatures of the approving officials of all of the respective parties entering into the MOA and will remain in effect for five years unless terminated. In the fifth year of this MOA, a review will be conducted by the respective parties to update the Memorandum of Agreement with the intent to initiate another five year term.

Any party may terminate its participation in the MOA by providing thirty days written notice to each of the other parties to the MOA. The MOA will terminate if more than one of the Coastal Treaty Tribes elects to terminate its participation or upon the consensus of the members of the Policy Council.

VI Disclaimers

- A. Nothing in this MOA is intended to conflict with any current directive from the Department of Commerce or the Administrator of NOAA or any applicable federal, state or tribal law. If any of the terms of this MOA are determined by any of the parties to be inconsistent with applicable law or directives then those terms of the MOA shall be invalid, but the remaining terms and provisions of the MOA not affected by the inconsistency will remain in full force and effect.
- B. Nothing in this MOA will be construed to grant, expand, create or diminish any legally enforceable rights, benefits or responsibilities, substantive or procedural, not otherwise granted or created by existing law. Nothing in this MOA will be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty right, or other rights of any Indian tribe or preempt, modify or limit the exercise of any such right. Nothing in this MOA preempts or modifies the statutory authorities of NOAA or the NMSP, of the state, or the authorities of any Indian tribe.
- C. Nothing in this MOA is intended to substitute for government-to-government consultation that may be required by the federal trust responsibility or the executive orders and policy statements set forth in "Authorities" above. However, this MOA commits the signatory governments to work cooperatively and respectfully toward resolution of issues of mutual interest and concern.
- D. This MOA is not intended to obligate the funds of any party. Any resources allocated under this MOA will be specified in a program of work that will be annexed to this MOA or in a separate Agreement. Implementation of this MOA is subject to the availability of resources and the requirements of the Anti-Deficiency Act.
- E. This MOA is not intended to create any "agency" of the State of Washington within the meaning of RCW 34.05.010.

Adopted this 30th day of JAN at Olympia, WA.
2007

Signatures:

Vivian Lee

Hoh Indian Tribe

Michael McGehee for Ben Johnson Jr.

Makah Tribe

Chris DeGroot

Quileute Tribe

[Signature]

Quinalt Indian Nation

Christine Greig 1/30/07

State of Washington

[Signature] 1/30/07

NOAA National Marine Sanctuary Program