

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 100827401–0619–01]

RIN 0648–BA20

**Olympic Coast National Marine Sanctuary Regulations Revisions**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 304(e) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434(e)), the National Oceanic and Atmospheric Administration (NOAA) has been conducting a review of the management plan and regulations for Olympic Coast National Marine Sanctuary (OCNMS or sanctuary), located off the outer coast of the Olympic Peninsula in the State of Washington. As a result of the review, NOAA determined that it is necessary to revise the sanctuary's management plan and implementing regulations. NOAA proposes to revise the OCNMS regulations to: Prohibit wastewater discharges from cruise ships; update the language referring to tribal welfare considerations when issuing permits; correct the size of the sanctuary based on new area estimates without revising the sanctuary's actual boundaries; update the list of definitions; and update outdated information such as office location. NOAA also proposes additional changes to the grammar and wording of several sections of the regulations to ensure clarity and consistency with the NMSA and other sanctuaries in the National Marine Sanctuary System.

**DATES:** Comments on this proposed rule will be considered if received by March 15, 2011. Public hearings will be held as detailed below:

(1) *Port Angeles:* February 23rd, 6–9 pm, Clallam County Commissioners' hearing room (room 160), Clallam County Courthouse, 223 E. Fourth Street, Port Angeles, WA.

(2) *Forks:* February 24th, 6–9 pm, Washington Department of Natural Resources Community Room, 411 Tillicum Lane, Forks, WA.

**ADDRESSES:** Copies of the draft environmental assessment (DEA) that supports the proposed rule and revised draft management plan are available at Olympic Coast National Marine

Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362 and online at <http://olympiccoast.noaa.gov>.

You may submit comments, identified by RIN 0648–BA20, in the following ways:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** 360–457–8496, Attn: George Galasso.

- **Mail:** George Galasso, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362.

No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** George Galasso at (360) 457–6622, extension 12.

**SUPPLEMENTARY INFORMATION:****I. Introduction***A. Olympic Coast National Marine Sanctuary*

Designated in 1994, OCNMS is a place of regional, national and global significance. Connected to both the Juan de Fuca Eddy Ecosystem and the California Current Large Marine Ecosystem, OCNMS is home to one of North America's most productive marine ecosystems and to spectacular, undeveloped shorelines. OCNMS's mission is to protect the Olympic Coast's natural and cultural resources through responsible stewardship, to conduct and apply research to preserve the area's ecological integrity and maritime heritage, and to promote understanding through public outreach and education.

The sanctuary encompasses 2,408 square nautical miles (8,259 square kilometers) of marine waters off Washington State's rugged Olympic Peninsula. OCNMS is a highly productive, ocean and coastal environment of high ecological integrity

that is important to the continued survival of many ecologically valuable species of fish, seabirds and marine mammals and commercially valuable fisheries. Abundant and diverse biological communities are supported by the several types of habitat that comprise the sanctuary, including: Offshore islands; dense, sheltering kelp beds; numerous and diverse intertidal pools; rocky headlands; seastacks and arches; exposed sand and cobble beaches; submarine canyons and ridges; and the continental shelf. The sanctuary adjoins significant historical resources including American Indian village sites, ancient canoe runs, petroglyphs, American Indian artifacts and numerous shipwrecks. In addition, OCNMS is encompassed by the usual and accustomed fishing grounds of four American Indian tribes who exercise treaty reserved rights within the sanctuary.

*B. Need for Action*

Section 304(e) of the NMSA requires NOAA to review the management plan of each sanctuary at regular intervals. NOAA has conducted a review of the OCNMS management plan and determined that it is necessary to revise the management plan and regulations for the sanctuary. Therefore, NOAA is now announcing the availability of a draft management plan (DMP) and draft environmental assessment (DEA) for public review and comment, and publishing this proposed rule requesting comment.

The draft management plan for the sanctuary contains a series of action plans outlining activities to better achieve resource protection, research, education, operations, and evaluation objectives for the next five to ten years. The action plans are designed to address specific issues facing the sanctuary and, in doing so, to achieve the NMSA's primary objective of resource protection (16 U.S.C. 1431(b)(6)) and fulfill the sanctuary's terms of designation (59 FR 24586, May 11, 1994).

This proposed rule revises the OCNMS regulations as described below in the "Summary of the Regulatory Amendments" section. The environmental effects of these proposed revisions are analyzed in the DEA. The public is invited to comment on the DEA, which includes the DMP, and which is available at <http://olympiccoast.noaa.gov> or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

## II. Summary of the Regulatory Amendments

This section describes the changes NOAA is proposing to make to the OCNMS regulations.

### 1. Clarify Size of the Sanctuary Area

The size of the sanctuary has been recalculated using improved area estimation techniques and technology, resulting in a new estimate of the size of the sanctuary. There is no proposal to change the boundaries of the sanctuary. This proposed change is technical in nature and would not affect physical, biological or socioeconomic resources because it would not alter the sanctuary's original size or boundaries.

OCNMS regulations that date from 1994 estimate the sanctuary's area as approximately 2,500 square nautical miles (approximately 8,577 square kilometers) (59 FR 24586; May 11, 1994). However, current techniques allow for more accurate area calculations. Without altering the sanctuary's existing boundaries (as defined in the OCNMS terms of designation), NOAA recalculated the area within sanctuary boundaries and found it to be 2,408 square nautical miles (approximately 8,259 square kilometers). This technical change is solely the result of the improved accuracy of area measurement techniques since the sanctuary's size was first estimated in 1994. No change to the sanctuary boundaries is proposed.

### 2. Clarify and Update Sanctuary Description

This proposed rule change would replace the term "seabed" with the term "submerged lands" in the current regulatory language prohibiting "drilling into, dredging or otherwise altering the seabed of the sanctuary" (59 FR 24586; May 11, 1994). The current definition of the sanctuary boundary in the OCNMS terms of designation (59 FR 24586; May 11, 1994) recognizes submerged lands as part of the sanctuary. This rule change would make the regulations, which currently use the term "seabed", consistent with the description of the sanctuary in the terms of designation. This proposed change would also make the regulations consistent with language used in the NMSA (16 U.S.C. 1432(3)). Additionally, using the term "submerged lands" uniformly among the NMSA, OCNMS terms of designation, and OCNMS regulations would improve consistency with the regulatory language for the other national marine sanctuaries, which all refer to "submerged lands". The use of the term "submerged lands" will not alter

NOAA's current jurisdiction in OCNMS in any way. This regulatory change would not affect physical, biological or socioeconomic resources because it would not alter the original boundaries or designation of the sanctuary.

### 3. Clarify the Use of the Term "Traditional Fishing"

OCNMS regulations currently provide an exception for "traditional fishing" operations to three of the regulatory prohibitions. The term "traditional fishing" is defined as "using a fishing method that has been used in the sanctuary before the effective date of sanctuary designation (July 22, 1994), including the retrieval of fishing gear" (59 FR 24586; May 11, 1994). This OCNMS regulation allows fishing operations that were taking place before sanctuary designation to discharge certain fishing-related materials, disturb historical resources, and disturb the seabed. The precise language of these three exceptions is as follows (emphasis added):

- "Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;" (15 CFR 922.152(2)(i))
- "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." (15 CFR 922.152(3))
- "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 \* \* \* *Traditional fishing operations.*" (15 CFR 922.152(4)(ii))

In addition to replacing "seabed" with "submerged lands," as described earlier, NOAA proposes to replace the term "traditional fishing" with the term "lawful fishing" in these three places to: (1) Use a term that is more clearly understood; and (2) ensure that there is no distinction between current and future fishing operations. "Lawful fishing" is proposed to be defined as follows: "Lawful fishing means fishing authorized by a tribal, state or federal entity with jurisdiction over the activity."

Despite the definition provided in the regulation, and because of its varied connotation, the term "traditional" in OCNMS regulations may be incorrectly interpreted (e.g., equating traditional fishing with Native American fishing

techniques). By replacing the word "traditional" with "lawful" NOAA unambiguously recognizes fishing activities authorized by fisheries management authorities. This change is also consistent with terms used in the regulations for other national marine sanctuaries on the West Coast.

In addition to being more widely understood and consistent, this change makes clear that fishing activities authorized by regulations lawfully adopted by fishery management agencies are not subject to the prohibitions itemized in the OCNMS regulations. Since the time of Sanctuary designation, OCNMS has refrained from directly regulating fishing, and the proposed adoption of the "lawful fishing" terminology does not alter this approach. (See, generally, Final Environmental Impact Statement (NOAA 1993) and the final rule adopting regulations for OCNMS, 59 FR 24597 (May 11, 1994)).

### 4. Revise Regulations on Discharge/Deposit

This rule proposes to modify the regulations prohibiting discharging or depositing any material or other matter as follows:

- a. Prohibit discharges/deposits of treated and untreated sewage and graywater from cruise ships. For the purpose of this regulation and consistency with regulations in other West Coast national marine sanctuaries, cruise ships would be defined as a vessel with 250 or more passenger berths for hire and graywater would be defined as galley, bath, and shower water, per section 312 of the Federal Water Pollution Control Act (FWPCA; 33 U.S.C. 1251-1387). These revisions address NOAA's concerns about possible impacts from large volumes of sewage and graywater discharges in the sanctuary, whether treated or not, from cruise ships. Currently, legal discharges from vessels, including cruise ships, transiting or engaging in activities in OCNMS have the potential to negatively impact water quality, as well as pose health risks to humans who use the area. These proposed modifications to OCNMS regulations would also make OCNMS discharge/deposit prohibitions consistent with the cruise ship discharge/deposit prohibitions already in effect within the other four West Coast national marine sanctuaries.

#### Sewage

Vessel sewage discharges typically are more concentrated than domestic land-based sewage. They may introduce disease-causing microorganisms (pathogens), such as bacteria,

protozoans, and viruses, into the marine environment (EPA 2007). They may also contain high concentrations of nutrients that can lead to eutrophication, which has been linked to harmful algal blooms and oxygen-depleted “dead zones” in aquatic environments, and may yield unpleasant esthetic impacts to the sanctuary (diminishing sanctuary resources and its ecological, conservation, esthetic, recreational and other qualities).

#### Graywater

Graywater discharges also have potential to degrade water quality. Graywater can contain a variety of substances including (but not limited to) detergents, oil and grease, pesticides and food wastes (Eley 2000). Graywater discharges from cruise ships can have constituent levels in a similar range to untreated domestic waste water, and levels for nutrients, biological oxygen demand, fecal coliforms, and food pulper wastes may be many times higher than typical domestic graywater. Additionally, fecal coliform concentrations in graywater often exceed the 200 fecal coliforms/100 ml performance standard for marine sanitation devices (MSDs) (EPA 2008a).

Very little research has been done on the impacts of graywater on the marine environment, but many of the chemicals commonly found in graywater are known to be toxic (Casanova *et al.* 2001). Furthermore, studies of graywater discharges from cruise ships in Alaska (prior to strict state effluent standards for cruise ship graywater discharges) found very high levels of fecal coliform in graywater (far exceeding the federal standards for fecal coliform from Type II MSDs). These same studies also found high total suspended solids concentrations in some graywater sources (exceeding the federal standards for total suspended solids from Type II MSDs).

Wastewater treatment systems used on large cruise ships discharging in Alaskan waters, which constitute most cruise ships that transit through OCNMS, have generally performed well at treating effluent constituents to the levels required by Alaska Department of Environmental Conservation and the U.S. Coast Guard since 2001 (ADEC 2010). Monitoring is conducted for constituents such as fecal coliform bacteria (an indicator of pathogens), pH, chlorine, biological oxygen demand, and total suspended solids. In 2009, exceedance of discharge standards applicable to cruise ships occurred most commonly with ammonia, less frequently for nickel, copper and zinc,

and rarely or never for other contaminants (ADEC 2010).

Analysis of the actual time cruise ships transited OCNMS in 2009 and estimated wastewater generation rates provides a range of potential discharge volumes from 0.2 to 1.3 million gallons of treated sewage and from 1.5 to 5.0 million gallons of graywater. Evaluation of potential environmental impacts of these discharges is complicated. The nutrient and chemical concentrations in wastewater discharges varies depending on both the type of wastewater treatment system being used as well as the ongoing functional performance of individual systems. Also, the volume of wastewater actually discharged from cruise ships in the sanctuary is uncertain. While industry representatives have stated that cruise ships currently avoid all discharges in the sanctuary, this has not been verified. Thus, it is difficult to quantify specific reductions in individual nutrients or chemicals that would be achieved under this proposed rule.

The water quality of the sanctuary is generally considered to be good and influenced primarily by natural processes (ONMS 2008). Thus, this proposed regulatory change would result in a less than substantial improvement of water quality. However, naturally occurring harmful algal blooms and low dissolved oxygen events associated with deepwater upwelling often occur during the summer months off the coast of Washington and Oregon. Because cruise ship traffic volume through the sanctuary is highest during this same period, there has been some concern that discharge of nutrient rich sewage and graywater by cruise ships may exacerbate these natural phenomena. Elimination of nutrient contributions from cruise ship discharges would ensure that water quality conditions in the sanctuary are not degraded by additional nutrients and biological and chemical oxygen demand associated with these wastewater discharges.

Most cruise ships have sufficient holding tank capacity to hold sewage and graywater while within the sanctuary. As for other large oceangoing ships, given the small crew size (on average, large oceangoing ships carry crews of approximately twenty people, but crew size may range from five to fifty people, the treated sewage and graywater volumes generated by such ships are far less than those from cruise ships. Therefore, the proposed regulation specifically prohibits discharges from cruise ships and does not address discharges from other large oceangoing vessels.

Additional analysis of the potential impacts to biological, physical and socioeconomic resources from graywater and sewage discharges/deposits are provided in the DEA, which is available at <http://olympiccoast.noaa.gov> or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

b. Adopt a definition of “cruise ship.” A definition of “cruise ship” would be added to OCNMS regulations as follows: “Cruise ship means a vessel with 250 or more passenger berths for hire.” This proposed definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

c. Adopt a definition of “clean.” The definition of “clean” would be added to OCNMS regulations as follows: “Clean means not containing detectable levels of harmful matter.” This proposed definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

#### 5. Revise Permit Regulations in Relation to Tribal Welfare

Under the current regulations, ONMS can issue a permit to conduct an activity otherwise prohibited if it finds that the activity will meet criteria identified in the regulations. One of the criteria listed for permit issuance is to “promote the welfare of any Indian tribe adjacent to the sanctuary.” This provision is ambiguous and could be interpreted as allowing an entity not affiliated with a tribe to apply for a permit that it alleges could promote the welfare of an Indian tribe adjacent to the sanctuary. The concept of “promote the welfare of any Indian tribe” is not defined or explained further in the regulations, the terms of sanctuary designation or the 1993 Final EIS. As a result there has been a reluctance to implement this provision.

NOAA is proposing to modify the regulation to clarify that a permit under this provision is available only to American Indian tribes adjacent to the sanctuary (i.e., Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation). In addition, NOAA proposes to replace the phrase “or promote the welfare of any Indian tribe adjacent to the Sanctuary.” with a more descriptive basis for permit issuance. NOAA intends to consider permit applications made by adjacent Indian Tribes “to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or tribal economic development.” NOAA acknowledges its trust responsibility to federally recognized Indian tribes. These permit criteria are consistent with

Executive Order 13175 on Consultation and Coordination With Indian Tribal Governments.

#### 6. Make Other Minor Changes to Regulatory Text

a. NOAA proposes deleting the definition for the term “Federal project”. The current OCNMS regulation that cites this definition refers to “Federal projects in existence on July 22, 1994”. However, there is only one project that fits this definition (the Quillayute River Navigation Project). For clarity, NOAA would revise the OCNMS regulations to reference the Quillayute River project specifically. The definition for “Federal Project” would be deleted because the term would no longer be used in the regulations. The term “Quillayute River Navigation Project” would be used in § 922.152(a)(1)(E) and § 922.152(h).

b. The mailing address for permit applications in § 922.153 would be updated to reflect the new OCNMS office location.

### III. Classification

#### *National Environmental Policy Act*

NOAA has prepared a draft environmental assessment to evaluate the environmental effects of the proposed rulemaking. Copies are available at the address and web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

#### *Coastal Zone Management Act*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state’s coastal program on potential Federal regulations having an effect on state waters. Because the Olympic Coast National Marine Sanctuary encompasses a portion of the Washington State waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the State of Washington Coastal Zone Management Program for evaluation of Federal consistency under the CZMA.

#### *Executive Order 12866: Regulatory Impact*

Under Executive Order 12866, if the proposed regulations are “significant” as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not

significant within the meaning of Executive Order 12866.

#### *Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Members of the OCNMS Advisory Council, Olympic Coast Intergovernmental Policy Council, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, the Washington State Ocean Caucus and Pacific Fishery Management Council have been closely involved with the development of the draft management plan for OCNMS and proposed regulatory changes. In addition, OCNMS staff have consulted with staff from all of the previously mentioned state agencies, along with the Washington State Historic Preservation Office, on development of the DEA that supports the proposed rule. The State of Washington Governor’s Office, as a member of the Olympic Coast Intergovernmental Policy Council, has also been involved in developing the draft management plan, DEA and the proposed rule.

#### *Executive Order 13175: Tribal Consultation and Collaboration*

This proposed rule was developed after consultation and collaboration with representatives from the Makah, Hoh, and Quileute Tribes and the Quinault Indian Nation through their membership on the Olympic Coast Intergovernmental Policy Council and the OCNMS Advisory Council.

#### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Small businesses operating within the sanctuary include approximately 400 commercial fishermen, 30 consumptive recreational charter businesses, 7 non-consumptive recreational charter businesses, and one aviation business.

The replacement of the term “seabed” with “submerged lands” in the language prohibiting “drilling into, dredging or otherwise altering the seabed of the sanctuary” would not have a significant adverse impact on small entities within the sanctuary because there is no change

in the sanctuary’s protective measures for submerged lands and therefore no impact on any businesses. The current definition of the sanctuary boundary in the terms of designation (59 FR 24586; May 11, 1994) recognizes submerged lands as part of the sanctuary. Similarly, the proposed correction of the estimate of the size of the sanctuary would not impact any of the small entities operating within the sanctuary because the proposed correction is merely descriptive in nature. The proposed change does not alter the boundaries of the sanctuary or the scope of its jurisdiction but rather is a more accurate estimate of its size.

The proposed change from the term “traditional fishing” to “lawful fishing” would not affect the small entities who conduct fishing activities in the sanctuary because the proposed change would not alter the regulatory jurisdiction of the sanctuary, nor would it affect the prosecution of current fisheries in the sanctuary. The change to the term “lawful fishing” makes clear that fishing activities authorized by fishery management agencies with jurisdiction over such fisheries are not subject to certain prohibitions identified in the sanctuary regulations. Since this regulatory change would not alter the status quo, there would not be an impact on small fishing businesses as a result of this regulatory change.

The proposed prohibition on sewage and graywater discharges from cruise ships would not have a significant adverse impact on small entities because cruise ship companies, which operate under an annual budget of higher than \$7 million, are generally large businesses that do not fit the definition of small entities under the Regulatory Flexibility Act (RFA; 5 U.S.C. 603(a)). The Small Business Administration does not provide a category of business for the cruise ship industry in their list of size standards for small businesses; however, it provides a category for “sporting goods store” and “marina”, which can be used to approximate the size standards for the businesses affected by this rule. According to the SBA, a small business in the sporting goods or marina industries is one that has annual receipts of less than \$7 million. None of the cruise ship businesses affected by this proposed rule falls under the SBA’s definition of a “small entity” for the purposes of this action.

The modification of permit issuance criteria is proposed to clarify that only American Indian tribes adjacent to the sanctuary are eligible to seek permits for activities otherwise prohibited in the sanctuary for purposes of enhancing

tribal self-determination, tribal government functions, the exercise of treaty rights or tribal economic development. This modification would not have an effect on the American Indian tribes adjacent to the sanctuary because it would continue to offer the same opportunity to Tribes to obtain a sanctuary permit as is currently available. This modification could have an adverse effect on other entities that may have had an interest in proposing a project requiring a permit from the Sanctuary Superintendent; however, NOAA has no indication that any such project would be proposed by a small business or entities in the foreseeable future. Therefore, the proposed modification is not expected to have a significant adverse effect on any small entities, particularly tribal entities.

All other regulatory amendments to the OCNMS regulations proposed in this rulemaking are either technical changes or are not expected to have any measurable impact, economic or otherwise, on the resources and people of the United States of America.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

#### *Paperwork Reduction Act*

This rule does not contain any new information collection requirements or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (*see ADDRESSES*) and by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), or fax to (202) 395-7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

#### IV. Request for Comments

NOAA requests comments on this proposed rule for 60 days after publication of this notice.

#### V. References

A complete list of all references cited herein is available upon request (*see ADDRESSES* section).

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: January 7, 2011.

#### David M. Kennedy,

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

2. Amend § 922.150 to revise paragraph (a) to read as follows:

##### § 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi) (approximately 8,259 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

\* \* \* \* \*

3. Amend § 922.151 to remove the definitions of “Federal Project” and “Traditional fishing”, and add definitions of “Clean”, “Cruise ship”, and “Lawful fishing”, in alphabetical order to read as follows:

##### § 922.151 Definitions.

\* \* \* \* \*

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

\* \* \* \* \*

*Lawful fishing* means fishing authorized by a tribal, state or federal entity with jurisdiction over the activity.

\* \* \* \* \*

4. Revise § 922.152 to read as follows:

##### § 922.152 Prohibited or otherwise regulated activities.

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

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

(2)(i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

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

(B) 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.*;

(C) 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;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to the Quillayute River Navigation Project.

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

(3) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust or anchor wash.

(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 lawful fishing operations.

(5) Drilling into, dredging or otherwise altering the submerged lands of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged land of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas

necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(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), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian 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 NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one NM 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 prohibitions in paragraph (a) (2) through (5), (7) and (8) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

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

(d)(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.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W-237A, W-237B, and Military Operating Areas Olympic A and B in the Sanctuary:

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

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

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director 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 (d).

(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 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.

(e) 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 § 922.48 and § 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) 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.

(g) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director 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 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.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.153 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 § 922.47, of valid authorizations in existence on July 22, 1994 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 the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

5. Amend § 922.153 to revise paragraphs (b) and (c) to read as follows:

**§ 922.153 Permit procedures and criteria.**

\* \* \* \* \*

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362-2925.

(c) The Director, 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 (7) of § 922.152, if the Director 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 be issued to an American Indian tribe adjacent to the sanctuary, or its designated representative, to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the American Indian tribe. For the purposes of this part, American Indian tribes adjacent to the sanctuary mean the Hoh, Makah, and

Quileute Indian Tribes and the Quinault Indian Nation.

\* \* \* \* \*

[FR Doc. 2011-630 Filed 1-13-11; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Chapter I

#### No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee will hold its fifth meeting in Nashville, Tennessee. The purpose of the meeting is to continue working on reports and recommendations to Congress and the Secretary as required under the No Child Left Behind Act of 2001.

**DATES:** The Committee's fifth meeting will begin at 8 a.m. on February 1, 2011, and end at 12:30 p.m. on February 4, 2011.

**ADDRESSES:** The meeting will be held at the Gaylord Opryland Resort and Convention Center, 2802 Opryland Drive, Nashville, Tennessee 37214.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Official, Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563-3805; fax (505) 563-3811.

**SUPPLEMENTARY INFORMATION:** The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee was established to prepare and submit to the Secretary a catalog of the conditions at Bureau-funded schools, and to prepare reports covering: the school replacement and new construction needs at Bureau-funded school facilities; a formula for the equitable distribution of funds to address those needs; a list of major and minor renovation needs at those facilities; and a formula for equitable distribution of funds to address those needs. The reports are to be submitted to Congress and to the Secretary. The Committee also expects to draft

proposed regulations covering construction standards for heating, lighting, and cooling in home-living (dormitory) situations.

The following items will be on the agenda:

- Review and approve October 2010 meeting summary;
- Review report requirements and logistics;
- Review and discuss report sections addressing renovation repairs and school construction and replacement;
- Review and discuss dormitory standards language;
- Review and discuss updated findings from Complementary Educational Facilities and FMIS surveys and catalogue of facilities;
- Draft executive summary and key lessons;
- Identify next steps; and
- Receive public comments.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: January 10, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2011-722 Filed 1-13-11; 8:45 am]

BILLING CODE 4310-W7-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 300

[REG-124018-10]

RIN 1545-BJ65

#### User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed rulemaking that amends the regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents.

**DATES:** The public hearing, originally scheduled for January 14, 2011, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel

(Procedure and Administration), at *Richard.A.Hurst@irs.counsel.treas.gov*.

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the **Federal Register** on Friday, December 10, 2010 (75 FR 76940), announced that a public hearing was scheduled for January 14, 2011, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 300 of the Internal Revenue Code.

The public comment period for these regulations expired on January 10, 2011. Outlines of topics to be discussed at the hearing were due on January 5, 2011. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, January 12, 2011, the taxpayer, who wished to present oral comments, has requested to withdraw. Therefore, the public hearing scheduled for January 14, 2011, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2011-921 Filed 1-12-11; 4:15 pm]

BILLING CODE 4830-01-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 70, 71, 72, 75, and 90

RIN 1219-AB64

#### Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; extension of comment period; request for comments.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the comment period on the proposed rule addressing Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. This extension gives commenters additional time to review and comment on the proposed rule. The proposal was published on October 19, 2010 (75 FR 64412), and is available on MSHA's Web site at <http://www.msha.gov/REGS/FEDREG/PROPOSED/2010Prop/2010-25249.pdf>.

**DATES:** All comments must be received or postmarked by May 2, 2011.