

Oregon Coast National Marine Sanctuary Proposal  
*Draft Status Report*

Oregon Ocean Policy Advisory Council

October 8, 2006 Draft

## **Oregon Coast National Marine Sanctuary Proposal Draft Status Report**

### **Draft Executive Summary**

In December, 2005, Governor Kulongoski requested that the Ocean Policy Advisory Council (OPAC) provide him with advice in developing a proposal for establishing a National Marine Sanctuary (NMS) along the of the Oregon coast. The Governor asked OPAC to do three things regarding his sanctuary proposal: (1) provide information to, and gather input from local and tribal governments, the fishing industry, other ocean users, and the public; (2) assess whether the Ocean Stewardship Area is an appropriate area for a sanctuary and if not, what area might be appropriate; and (3) identify issues or concerns that should be addressed in the designation process or future management. The present due date for the OPAC report is December 31, 2006.

**OPAC Progress.** OPAC contracted with Oregon State University to develop a sanctuary background report and established a Working Group to design and carry out a public input process.

**Status Report Request.** In September 2006, the Governor asked OPAC to provide him with a status report, focused on two issues:

- (1) *Fisheries Management:* What have you learned about fisheries management in national marine sanctuaries? Based on what you have learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management?
- (2) *Governance:* What governance structures exist between federal and state governments within national marine sanctuaries across the country? What is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management?

### **Fisheries Management**

Findings:

- Many existing sanctuaries directly or indirectly get involved with management of fisheries, working with regional fishery management councils. To protect habitat and/or species, sanctuaries have sought gear restrictions or temporary or permanent area closures, including marine reserves.

Implications:

- Given the very large size of the proposed Oregon sanctuary, it is likely that such a NMS would eventually get involved in some aspect of fisheries management. PFMC/NMFS would have to respect the principal purpose of sanctuaries, namely resource protection. Fisheries management would need to be consistent with this purpose. This could lead to further restrictions on commercial fishing, albeit imposed by PFMC and NMFS and hence "lighter" than if the NMS had direct fisheries management authority. Lawsuits by environmental groups would also be more likely and have higher probability of success.

### **Governance**

Findings:

- Existing sanctuary governance arrangements vary. Local governments and stakeholders have a voice in sanctuary management through an advisory council only. State

government has the potential for a more significant role, depending on decisions made during the sanctuary designation process.

- Sanctuary size and scale will be a key determinant of the complexity and workability of potential governance arrangements. A very large sanctuary—as proposed—would likely generate numerous governance disputes, not just among state and federal governments, but also among multiple federal authorities involved.

Implications:

- Many of the issues and concerns OPAC has about a sanctuary in Oregon waters could be addressed in the development of a sanctuary designation document and management plan; however, there is significant uncertainty about the possibility of creating governance arrangements favorable to Oregon interests.

### **Other Important Issues**

Findings:

- Additional regulation of dredging and dredged material disposal is likely within sanctuary waters, suggesting implications for maintenance of authorized shipping channels and offshore disposal sites vital to Oregon’s ports, shipping companies, and commercial and recreational fishing.
- Establishing a blanket sanctuary in Oregon waters could have an adverse impact on Oregon’s efforts to accommodate communication and other cable landings.
- The Congressional moratorium on new sanctuaries and under-funding of the present sanctuary program poses significant hurdles for establishing a new sanctuary in Oregon.
- Public comments at OPAC meetings regarding the proposed sanctuary have been mostly negative. Groups OPAC might expect to support the sanctuary because of its conservation and protection mandates—notably the environmental community—has been mostly silent on the proposal; instead, their focus has been on the need to get marine reserve planning underway.
- Assuming governance and fisheries concerns are satisfied in the sanctuary designation process, an Oregon national marine sanctuary would provide many benefits to ocean users and coastal communities.

Implications:

- Although there may be important ecosystem benefits associated with designation of a large NMS off Oregon, there are concerns about the viability of maintaining some existing uses and activities, given the overarching protection mandate of sanctuaries.
- If an Oregon sanctuary is designated, funding and other resource constraints may make effective planning and implementation problematic.
- Although OPAC has yet to systematically test public opinion, the negative informal feedback to date does not make us optimistic about gaining broad-based support for an Oregon Sanctuary.

NOTE: This executive summary will be revised to be consistent with the final version of the Status Report.

## **Oregon Coast National Marine Sanctuary Proposal Draft Status Report<sup>1</sup>**

### **Introduction**

In December, 2005, Governor Kulongoski requested that the Ocean Policy Advisory Council (OPAC) provide him with advice in developing a proposal for establishing a National Marine Sanctuary (NMS) along the of the Oregon coast. The proposed sanctuary would include approximately 21,000 square miles of state and federal waters and submerged lands of the continental shelf, slope, and rise, extending to the edge of the continental margin and from Washington State to California (Figure 1). This area corresponds to the *Oregon Ocean Stewardship Area*, the area over which Oregon has asserted its interest in effective marine resource management and stewardship for more than a decade (*Oregon Ocean Plan*, 1991; *Oregon Goal 19: Ocean Resources*, 2000 amendment). At present, roughly 5 percent of this area is principally under state control (the territorial sea); the remainder is under federal control.

In his December 13, 2005 letter to OPAC asking for assistance, the Governor cited the difficult challenges facing marine resource users and managers, and emphasized the need for more integrated ocean policy and ecosystem-based management offshore. His sanctuary proposal, he said, was also influenced by the findings and recommendations of the US Commission on Ocean Policy's report, *An Ocean Blueprint for the 21<sup>st</sup> Century* (USCOP 2004). That report documented many threats to the marine environment and marine-dependent communities, among them pollution, climate change, habitat loss, and declining fisheries stocks; and recommended an integrated, regional, and ecosystem-based approach to US ocean

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<sup>1</sup> This preliminary draft report draws on research conducted by the OPAC NMS Working Group, and by the OSU research team that is preparing a background report on sanctuary issues. Other findings are based on public comment delivered at OPAC meetings and special presentations by NMS staff and one California fishing industry representative with sanctuary experience in that state. The process from here will include (1) full OPAC review at October 10, 2006 meeting (facilitated discussion); (2) NMSWG redraft, followed by email review by all OPAC members; (3) Redrafting based on that review; (4) Review, critique, and (hopefully) approval at a November meeting of the full OPAC; (5) Delivery of the status report to the Governor; and (6) the Governor's review and suggestions for next steps.

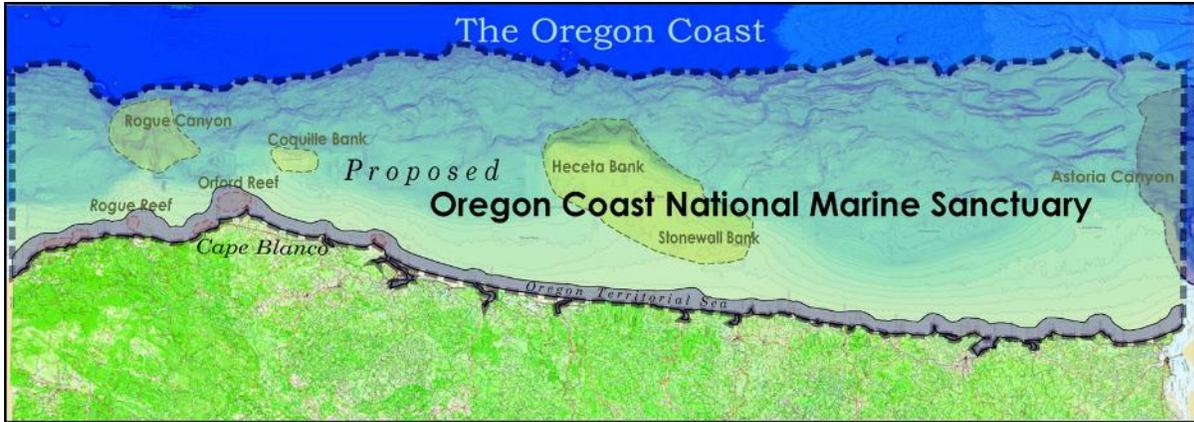


Figure 1: Proposed Oregon Coast National Marine Sanctuary

management. In making his proposal, Governor Kulongoski identified potential benefits of a marine sanctuary for Oregon, including greater state policy influence over ocean activities under federal control; increased protection of marine resources from harmful activities; improved management under one coordinated, ecosystem-scale plan; increased research and development of an improved information base for management; and economic opportunities associated with the national and international attention a sanctuary would generate. The Governor also stated that fisheries management would remain under control of the Pacific Fisheries Management Council (PFMC), NOAA Fisheries, and the Oregon Department of Fish and Wildlife (ODFW), and not be part of the sanctuary's management portfolio.

### **What is a National Marine Sanctuary?**

A national marine sanctuary (NMS) is type of marine protected area (MPA). An MPA is broadly defined in Presidential Executive Order 13158 (2000) as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein".

Under the National Marine Sanctuary Act (NMSA), a sanctuary is "an area of the marine or Great Lakes environment of special national significance that has been designated as a sanctuary and is managed by NOAA". The NMSA describes the purposes and polices of the program, outlines procedures for designation of sanctuaries, and provides funding authorizations for appropriations. The primary objective of a marine sanctuary is to protect its natural and

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cultural features while allowing people to use and enjoy the ocean in a sustainable way. Marine sanctuaries carry out this objective through comprehensive management of their special conservation, recreational, ecological, historical, research, educational, or aesthetic resources. Sanctuaries may be designated by the Secretary of Commerce, by Congress directly, or Congress may direct the Secretary to designate a sanctuary.

There are currently 13 national marine sanctuaries designated under the NMSA, varying in size from 0.25 square miles in American Samoa’s Fagatele Bay to 5,328 square miles in California’s Monterey Bay (Figure 2). Specific purposes and goals are defined for each sanctuary during its designation process. For example, the Monitor NMS off North Carolina was created solely to protect the final resting ground of the Civil War ironclad warship, the U.S.S. Monitor, by NOAA and the US Fish and Wildlife Service, while the Flower Gardens NMS, off of the coast of Texas in the Gulf of Mexico, is intended to protect a unique coral reef habitat. A 14<sup>th</sup> “sanctuary”—the Northwestern Hawaiian Islands National Monument—was designated in 2006 under the Antiquities Act and is managed jointly

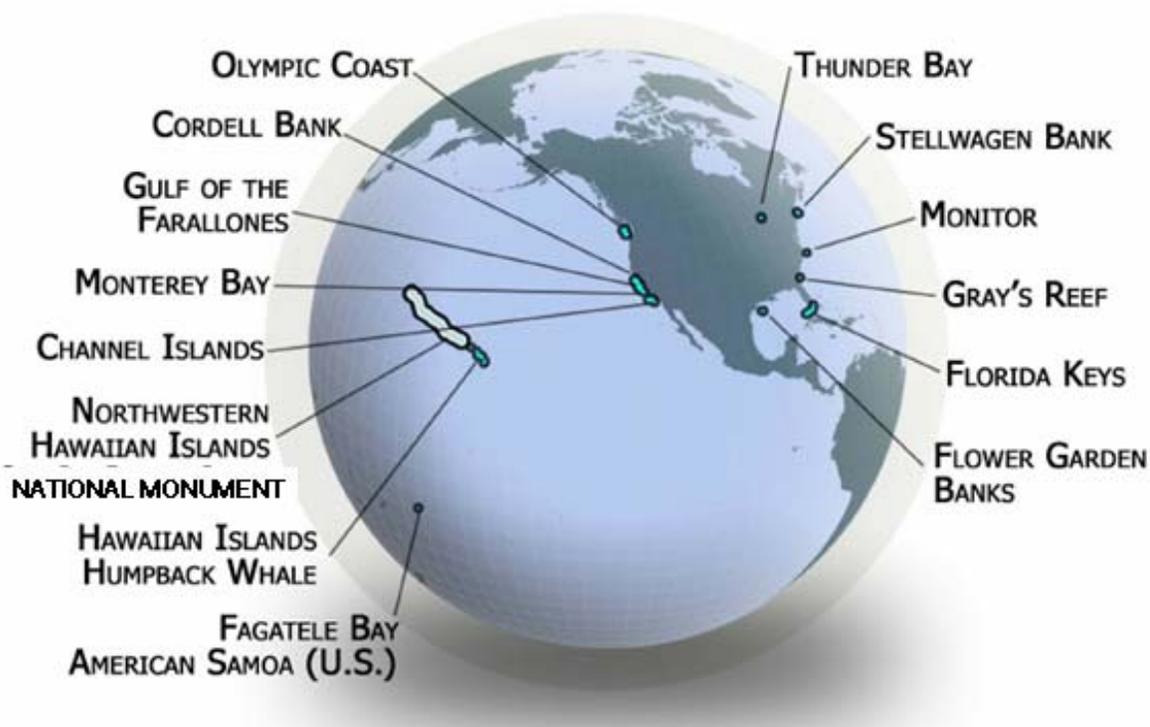


Figure 2. Location of US national marine sanctuaries.

### **Governor's Initial Charge to OPAC**

The Governor asked OPAC for assistance in three things regarding a potential Oregon sanctuary:

- (1) Provide information to, and gather input from local and tribal governments, the fishing industry, other ocean users, and the public;
- (2) Assess whether the Ocean Stewardship Area is an appropriate area for a sanctuary and if not, what area might be appropriate; and
- (3) Identify issues or concerns that should be addressed in the designation process or future management.

In providing this assistance, the Governor asked OPAC to consider three other requirements for a sanctuary. First, a sanctuary must be scaled to be consistent with marine ecosystem processes and dynamics. Second, all stakeholders must be involved in designating and managing a sanctuary. Finally, the best available science and local user knowledge must be used in sanctuary designation and subsequent management.

Initially, the Governor asked OPAC to report its findings by July 1, 2006, and later revised the due date to December 31, 2006 to accommodate public workshops OPAC was planning.

### **OPAC Progress**

In January 2006, OPAC established a NMS Outreach Committee to develop a work plan for seeking public input on a proposed sanctuary. That group later became OPAC's NMS Working Group, charged with developing and carrying out the public process and producing the report to the Governor. Initially, public workshops were planned for spring 2006. However, funds to carry out the process were not provided until July 2006, when a contract was issued for facilitation assistance at outreach workshops. Another contract was issued to Oregon State University to develop a background report on the sanctuary proposal. That report is presently in draft form and being revised. In addition, at regular OPAC meetings in January and March, OPAC heard presentations and questioned staff from the National Marine Sanctuary Program and a public member of a fishing group that has had extensive interactions with the NMS in Monterey Bay.

On August 24<sup>th</sup>, OPAC members participated in a "dry run" of the public process designed by the NMS Working Group. At its regular meeting the following day, OPAC decided

that revisions were needed in the public process and asked the NMS Working Group to prepare a revised process for OPAC approval at its October 10<sup>th</sup> meeting. Considering the delay in conducting a public input process that had been scheduled to start in October, OPAC also relayed a request to the Governor for an extension through March 31, 2007 for a final report.

### **Why this Status Report?**

Responding to OPAC's request for a second extension to March 31, 2007, the Governor asked OPAC for a formal *status report*, based on what OPAC has learned thus far from its research, and from presentations and public testimony at regular OPAC meetings. The Governor asked OPAC to focus this report on two issues that seem to be of central concern: ***governance*** and ***fisheries management***. Specific questions the Governor wants addressed were outlined in a September 29, 2004 memo from the Governor's Natural Resources Office:

- (1) What have you learned about fisheries management in national marine sanctuaries?

Based on what you have learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management?

- (2) What governance structures exist between federal and state governments within national marine sanctuaries across the country? What is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management?

After reviewing OPAC's report on these questions, the Governor will suggest next steps for OPAC's analysis of the full national marine sanctuary proposal. This report answers the above questions based on what we have learned to date, and addresses several other issues OPAC believes are important to accomplish the Governor's stated goals for comprehensive, integrated marine resource management at an ecosystem scale.

### **Public Outreach on the Sanctuary Proposal Still Needed**

Prior to issuing a *final report* to the Governor on his national marine sanctuary proposal, OPAC believes it is important and intends to reach out to a broad array of ocean users, local governments and ports, tribes, coastal residents, and other Oregonians. We believe have a responsibility to these stakeholders to fully explain the sanctuary proposal, identify their issues and concerns, and get their feedback and advice.

## **Key Issues for an Oregon National Marine Sanctuary**

### **Fisheries Management Issues**

#### **Preliminary Findings**

Preliminary findings on fisheries management in sanctuaries are outlined below, addressing the questions posed by the Governor, namely: What have you learned about fisheries management in national marine sanctuaries? Based on what you have learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management?

***Preliminary Finding 1: Many existing sanctuaries directly or indirectly get involved with management of fisheries, mainly through gear restrictions or temporary or permanent closures to protect marine habitat.***

Experience in other sanctuaries has raised concern among OPAC members and many testifying at OPAC meetings that a sanctuary would eventually insert itself directly or indirectly in fisheries issues, given the overarching mandate of the Sanctuaries Act for resource protection. Bottom trawling, for example, is expressly allowed in just three sanctuaries—Olympic Coast, Gulf of Farallones, and Cordell Bank. Five other sanctuaries prohibit bottom trawling, and four restrict it to certain areas (Table 1). Other sanctuaries get involved indirectly through designation of no-take marine reserves within sanctuary boundaries (e.g., Florida Keys NMS and Channel Islands). It is certainly conceivable, even probable, that marine reserves could be pursued in federal waters of an Oregon sanctuary with no state veto and potentially little state oversight. Although this is speculation, experience elsewhere provides a basis for it, as outlined below.

Channel Islands NMS (*Frank Warrens and others*)

Monterey Bay NMS (*Frank Warrens and others*)

Florida Keys NMS (*Frank Warrens and others*)

*Other fishery management issues raised by OPAC?*

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Table 1.

**RANGE OF GOVERNANCE IN NATIONAL MARINE SANCTUARIES**

Marine Sanctuary	SPECIFIC REGULATIONS									GENERAL REGULATIONS/PROHIBITIONS <sup>1</sup>		
	Fishing	Oil/Gas	State Waters	Dredging	Drilling	Maritime Passage	Fiber Optic Cables	Wave Energy Generation	Alternative Energy Generation	Depositing Any Material or Matter	Constructing, abandoning or placing any structure on lake/ocean bottom	Damaging, taking or removing any bottom formation
Hawaiian Islands Humpback Whale			S	Y	Y					Y	Y	
Florida Keys		Y	S	Y	Y					Y	Y <sup>2</sup>	Y
Olympic Coast		Y	S	Y	Y					Y	Y	
Gulf of the Farallones		Y	S	Y	Y	Y				Y	Y	
Fagatele Bay	Y		NA	Y						Y		Y <sup>3</sup>
Channel Islands	Y	Y	S	Y	Y	Y				Y	Y	
Gray's Reef	Y		?	Y	Y					Y		Y
Cordell Bank		Y	N							Y		Y
Flower Gardens	Y	Y	N	Y	Y					Y		Y
Monterey Bay		Y	S	Y	Y					Y	Y	
Stellwagen Bank			N	Y	Y					Y	Y	
Thunder Bay			S <sup>4</sup>	Y <sup>5</sup>	Y							Y
Monitor	Y <sup>6</sup>		N	Y <sup>7</sup>	Y							

Y-Activity regulated

S-State waters are a designated part of the sanctuary

N-No state waters within the boundary of the marine sanctuary

<sup>1</sup> In addition to the prohibitions contained in general regulations. The National Marine Sanctuary Act makes it unlawful for any person to “destroy, causing the loss of, or injure any sanctuary resource managed under law. 16 USC §1436(1)

<sup>2</sup> Florida Keys NMS regulations prohibit “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[.]” 15 CFR §922.163(a)(3).

<sup>3</sup> Fagatele NMS regulations prohibit “disturbing the benthic community by dredging, filling \* \* \* or otherwise altering the seabed[.]” 15 CFR §922.102(a)(5). The Benthic Community is made up of organisms that live in and on the bottom of the ocean floor.

<sup>4</sup> Thunder Bay NMS is only sanctuary entirely within state waters.

<sup>5</sup> Thunder Bay NMS regulations prohibit “Drilling into, dredging or otherwise altering the lakebottom *associated with underwater cultural resources*[.]” 15 CFR §922.193(2).

“Underwater cultural resources” is defined to include matter such as sunken watercraft and artifacts associated with the watercraft. See 15 CFR §922.191(a)(1)-(2).

<sup>6</sup> Monitor NMS regulations prohibit trawling. 15 CFR §922.61(h)

<sup>7</sup> Monitor NMS regulations prohibit “lowering below the surface of the water any \* \* \* wrecking device[.]” 15 CFR §922.61(d)

## **Implications for Fisheries Management**

In his proposal for an Oregon sanctuary, the Governor emphasized that fisheries management continue to be the responsibility of NOAA fisheries, the Pacific Fisheries Management Council, and, in state waters, the Oregon Department of Fisheries and Wildlife. Even if this does turn out to be the arrangement, the PFMC, NOAA Fisheries, and ODFW would still have to respect the principal purpose of sanctuaries, namely resource protection. Fisheries management would need to be consistent with this purpose. This could lead to further restrictions on commercial fishing, albeit imposed by PFMC, NOAA Fisheries, and ODFW and hence "lighter" than if the NMS had direct fisheries management authority. Lawsuits by environmental groups would also be more likely and have higher probability of success.

## **Governance Issues**

### **Background**

*Governance* in the context of this report has to do with the use of public policies, institutions, and structures of authority, coordination, and collaboration to allocate resources, control uses and activities, and manage society's problems and affairs. *Ocean governance*, then, involves federal-tribal-state-local relations across jurisdictional boundaries; the management and protection of living resources such as fisheries and marine mammals; the exploitation of nonliving resources like oil and gas; the disposal and management of waste; the prevention and clean-up of oil and other spills; and the protection and coordinated management of special areas of the marine environment, such as reefs, rocky shores, and cultural artifacts.

Many laws and associated management structures are currently in place to address specific uses and activities in marine environments. However, the separate or sectoral nature of existing policies and programs has led to a variety of resource and jurisdictional conflicts over the last several decades. This in turn has led to proposals for a more integrated, national ocean policy, implemented regionally at ecosystem scales (USCOP 2004).

For the west coast of the United States, the largest ecosystem scale of interest is the highly productive *California Current Large Marine Ecosystem*, stretching from Washington State south to California and into Mexico. A regional, area-based framework for such an

ecosystem would not supplant existing sectoral management regimes (e.g., fisheries management); rather, it would seek to harmonize policies, resolve disputes, balance resource use and protection, and foster needed research, environmental monitoring, and education. This is the context that serves as the basis for an Oregon sanctuary comprised of the Ocean Stewardship Area (Figure 1).

### **Preliminary Findings**

Preliminary findings for sanctuary governance are outlined below, addressing the questions posed by the Governor, namely: What governance structures exist between federal and state governments within national marine sanctuaries across the country? What is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management?

***Preliminary Finding 2: Existing sanctuary governance arrangements vary. Local governments and stakeholders have a voice in sanctuary management through an advisory council only. State government has the potential for a more significant role, depending on decisions made during the sanctuary designation process.***

State versus Federal Roles. The roles and authorities of states and NOAA in sanctuary management vary. The most important determinant of state versus federal roles is whether a sanctuary includes state waters, federal waters, or both (Table 1). For example, one sanctuary (Thunder Bay) includes only state waters, so the state plays a strong co-management role with NOAA. Six sanctuaries include state and federal waters (similar to the proposed Oregon sanctuary). These have a variety of shared federal-state management, administrative, and decision-making structures; generally, states must approve all regulations within state waters, but NOAA's authority is paramount in federal waters. Sanctuaries comprised only of federal waters are managed principally by NOAA, with some state involvement for activities that affect state waters and the coastal zone.

Specific examples of sanctuary power-sharing arrangements for sanctuaries with both state and federal waters (the Oregon situation) are below.

Florida Keys NMS (*needs more specific research*)

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Hawaiian Islands Humpback Whale NMS (*needs more specific research*)

Olympic Coast NMS (*needs more specific research*)

Monterey Bay NMS (*needs more specific research*)

Channel Islands NMS (*needs more specific research*)

Of these examples, the sanctuaries most analogous to the proposed Oregon sanctuary are *this and that.... (needs more specific research)*.

Local Government and Stakeholder Roles. Local governments, tribes, ocean user groups, nongovernmental organizations, and other stakeholders have a voice in sanctuary management through a Sanctuary Advisory Council (SAC). SACs provide advice and recommendations to NOAA, through the Sanctuary Manager, regarding resource protection initiatives, research priorities, education and outreach needs, and administration. However, SACs are solely advisory in nature and its members have no authority to perform operational or management functions, or to represent or make decisions on behalf of a sanctuary or NOAA.

Regulation of Uses and Activities. Uses and activities prohibited or regulated by sanctuaries vary, but most prohibit oil, gas, and other drilling, mineral mining, dredging, ocean dumping, and placing structures on the bottom (Table 1). Some sanctuaries also prohibit bottom-damaging activities. Five sanctuaries—Fagatele Bay (AS), Channel Islands (CA), Gray’s Reef (GA), Flower Gardens (FL), and the Monitor (NC) are involved in regulating fisheries, although Regional Fishery Management Councils take the lead in fisheries management (this is discussed further later). Maritime passage is regulated in two sanctuaries—Gulf of the Farallones (CA) and Channel Islands (CA). Uses and activities not regulated by any sanctuary include siting of fiber optic cables, and wind or wave energy facilities.

***Preliminary Finding 3: Sanctuary size and scale will have a dramatic effect on the potential complexity and workability of potential governance arrangements, setting up potential disputes among multiple federal authorities as well as state-federal disagreements.***

A sanctuary encompassing the Oregon Ocean Stewardship Area, as proposed by the Governor, would include both state waters (~5 percent) and federal waters (~95 percent). At roughly 21,000 square miles, it would be the largest sanctuary designated under the Sanctuaries Act by a factor of four. The principal rationale for proposing such a large sanctuary is that it comprises the entire Oregon portion of the California Current Large Marine Ecosystem. Such an area would provide an unprecedented opportunity for Oregon to participate in the development and implementation of a single, coordinated management plan for a large part of a marine ecosystem.

Designating and developing a management plan and regulations for such a sanctuary would be a huge, complex task with many uncertainties. These include the adequacy of scientific information available to help make management decisions and justify regulatory and non-regulatory programs; the sheer number and diversity of state and federal agencies and authorities, existing and potential ocean users, and other stakeholders that would need to be engaged; the large array of issues such a sanctuary would face; and the significant initial and ongoing resources that would be required to undertake the needed research, planning, monitoring, and enforcement to ensure success.

In contrast to the present sanctuary proposal, the much smaller Heceta-Stonewall Banks complex was included by NOAA on a list of potential sanctuary in 1979. Although that site never advanced to active candidacy, it does represent an actual example of a much smaller Oregon sanctuary proposal. However, it does not begin to address the Governor's goal of putting a framework in place for comprehensive, ecosystem-based management of Oregon's offshore area. The feasibility and utility of this type of sanctuary has not been examined by OPAC.

OPAC also has not addressed the "appropriate size and scale" question posed by the Governor in his original charge to OPAC. Even so, it is hard to imagine how a much smaller area would meet the Governor's requirement for area-based management on an ecosystem scale. Nevertheless, this may warrant further investigation through OPAC's Scientific and Technical Advisory Committee (STAC) for a final report from OPAC.

## **Implications for Governance**

Many of the issues and concerns OPAC has about a sanctuary in Oregon waters could be addressed in the development of a sanctuary designation document and management plan. In theory, Oregon could satisfactorily address some of its concerns. For example, Oregon could insist on a strong co-management arrangement whereby it had joint decision-making authority for sanctuary regulations in all sanctuary waters, rather than just state waters. This would be unprecedented.

*[Discuss any mechanisms under NMSA to address these management concerns (e.g., sanctuary designation document; sanctuary management plan). Discuss any shortcomings with these mechanisms under NMSA. Perhaps include other creative ideas about collaborative management, either under the sanctuary program or independent of it]*

## **Other Issues**

***Preliminary Finding 4: Additional regulation of dredging and dredged material disposal is likely within sanctuary waters, suggesting implications for maintenance of authorized shipping channels and offshore disposal sites vital to Oregon's ports, shipping companies, and commercial and recreational fishing.***

All existing sanctuaries that include shallow water marine environments regulate dredging and disposal of dredged and other material in order to protect sanctuary resources. Dredging is already regulated by the Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899, and disposal of dredged material regulated under either Section 404 of the Clean Water Act or Section 103 of the Ocean Dumping Act. OPAC has not researched this issue with ports and harbors bordering other sanctuaries, but there is some concern that an Oregon sanctuary designation could establish higher regulatory hurdles than now exist.

*[Bergeron add additional material as appropriate.]*

***Preliminary Finding 5: Establishing a blanket sanctuary in Oregon waters could have an adverse impact on Oregon's efforts to accommodate communication and other cable landings.***

*[Scott McMullen flesh out this issue...]*

***Preliminary Finding 6: The Congressional moratorium on new sanctuaries and under-funding of the present sanctuary program poses significant hurdles for establishing a new sanctuary in Oregon.***

The National Marine Sanctuary Program has been chronically under-funded in recent years such that it does not have adequate funds to maintain and improve the existing network of 13 NMSs, let alone expand the system (NMSP 2004). As a consequence, the 2000 Congressional reauthorization of the NMSA included a moratorium on the designation of new sanctuaries, the lifting of which would be contingent on several factors:

- A study published by the Secretary of Commerce stating that the “addition of a new sanctuary will not have a negative impact on the [existing] system”;
- Sufficient funding for an inventory of new sanctuary resources; and
- Funding in the Commerce Department for site characterization studies of all sanctuaries within ten years.

OPAC believes that direct Congressional action would be necessary to designate, and authorize and appropriate funding for an Oregon sanctuary. Further, the large size and the ecological and institutional complexity of the proposed Oregon sanctuary would suggest that start-up and operational funding would be need to be significantly greater than is typical.

***Preliminary Finding 7: Public comments at OPAC meetings regarding the proposed sanctuary have been mostly negative. Groups OPAC might expect to support the sanctuary because of its conservation and protection mandates—notably the environmental community—has been mostly silent on the proposal; instead, their focus has been on the need to get marine reserve planning underway.***

Since January 2006, OPAC’s first regular meeting after announcement of the sanctuary proposal, most oral and written public comments at our regular meetings have at least in part focused on the sanctuary. Most of those comments have been negative (~75 percent). Expressed public concerns include possible adverse impacts on commercial and recreational fishing; perceived “mission creep” in other sanctuaries (i.e., sanctuaries gradually seeking more control); too much centralization of authority in one federal agency/program; adverse impacts on existing uses, such as cable routing; and frustration that the sanctuary proposal has delayed work on other important issues, such as marine reserve planning.

Representatives of environmental organizations have mostly been silent or neutral toward the sanctuary proposal, instead urging OPAC to move ahead with what they perceive is the more important agenda—the Governor’s charge for marine reserve planning. This might seem puzzling until one reads an Environmental Law Institute critique of the sanctuary program (Chandler and Gillelan 2004). A summary of that critique asserts that the sanctuary program has not met its protection mandate, posing the question: “Is the overriding purpose of the Act the preservation and protection of marine areas, or is it the creation of multiple use management areas in which preservation use has to contend with every other use, even exploitive ones like oil and gas extraction” (Chandler and Gillelan 2005, p. 7)? According to the report, this ambiguity produced confusion and led to implementation difficulties and, while providing the oceans with some protection, “it failed to create a comprehensive national network of marine conservation areas that restores and protects the full range of the nation’s marine biodiversity, nor does it have a credible strategy to do so.” The summary report goes on to say that the Sanctuaries Act suffers from several structural flaws, including:

- “The Act’s language makes it difficult to prohibit activities.
- Management of fisheries in sanctuaries has largely been ceded to NOAA Fisheries, not retained by sanctuary managers.
- The Act’s multiple use provision can be employed by politically powerful lobby groups to trump scientifically sound regulations.
- The exhaustive consultation requirements and mandate to facilitate multiple uses “consistent with protection” are not found in national parks and wilderness protection laws” (Chandler and Gillelan 2005, p. 20)

The report concludes that the “Sanctuaries Act is now so constrained by its own architecture that it stands little chance of producing the comprehensive system of marine preservation areas envisioned by early supporters who had hoped to create a system of marine wilderness preserves analogous to the terrestrial wilderness system” (Chandler and Gillelan 2005, p. 30).

The lack of overt support for the Oregon sanctuary proposal by environmental interests and instead their strongly-voiced support of marine reserves may be founded in the conclusions of the above referenced study.

***Preliminary Finding 8: Assuming governance and fisheries concerns are satisfied in the sanctuary designation process, an Oregon national marine sanctuary would provide many benefits to ocean users and coastal communities.***

An Oregon Coast National Marine Sanctuary would provide for an integrated, ecosystem-based approach to ocean management. It would allow ocean ecosystems to heal and perpetuate while still granting human access, recreation, and economic livelihood. An Oregon sanctuary could provide various levels of protection dependent on ocean ecosystem health. It could also help decrease in water pollution entering the ocean and provide an extra layer of protection against oil and gas drilling. The presence of a sanctuary off our coast could also help secure federal funds for scientific research and marine education. Finally, the education, outreach and public input to the process would promote a new ocean ethic that would help ensure appropriate attention is given to ocean issues in the future.

***Other Issues (OPAC identify and research)?***

### **Implications of Other Issues**

Although there may be important ecosystem benefits associated with designation of a large NMS off Oregon, there are concerns about the viability of maintaining some existing uses and activities, given the overarching protection mandate of sanctuaries. If an Oregon sanctuary is designated, funding and other resource constraints may make effective planning and implementation problematic. Although OPAC has yet to systematically test public opinion, the negative informal feedback to date does not make us optimistic about gaining broad-based support for an Oregon Sanctuary.

## **Conclusions**

This will be a summary of the major points or findings, similar to the Executive Summary at the front of this status report.

## **References**

Chandler, W.J. and H. Gillelan. 2004. The History and Evolution of the National Marine Sanctuaries Act. *Environmental Law Reporter* 34: 10505-10565.

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