

POTENTIAL MSP POLICY RECOMMENDATIONS

April 20, 2016

Recommendations from the Washington Coastal Marine Advisory Council (WCMAC) are intended to support and reinforce statutory requirements, including but not limited to RCW 43.143.010, RCW 43.143.030, and RCW 43.372.040 (4) (a-h):

RCW 43.143.010

- (1) The purpose of this chapter is to articulate policies and establish guidelines for the exercise of state and local management authority over Washington's coastal waters, seabed, and shorelines.
- (2) There shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.
- (3) When conflicts arise among uses and activities, priority shall be given to resource uses and activities that will not adversely impact renewable resources over uses which are likely to have an adverse impact on renewable resources.
- (4) It is the policy of the state of Washington to actively encourage the conservation of liquid fossil fuels, and to explore available methods of encouraging such conservation.
- (5) It is not currently the intent of the legislature to include recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources within the uses and activities which must meet the planning and review criteria set forth in RCW 43.143.030. It is not the intent of the legislature, however, to permanently exclude these uses from the requirements of RCW 43.143.030. If information becomes available which indicates that such uses should reasonably be covered by the requirements of RCW 43.143.030, the permitting government or agency may require compliance with those requirements, and appeals of that decision shall be handled through the established appeals procedure for that permit or approval.
- (6) The state shall participate in federal ocean and marine resource decisions to the fullest extent possible to ensure that the decisions are consistent with the state's policy concerning the use of those resources.

RCW 43.143.030

- (1) When the state of Washington and local governments develop plans for the management, conservation, use, or development of natural resources in Washington's coastal waters, the policies in RCW 43.143.010 shall guide the decision-making process.
- (2) Uses or activities that require federal, state, or local government permits or other approvals and that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses, may be permitted only if the criteria below are met or exceeded:
 - (a) There is a demonstrated significant local, state, or national need for the proposed use or activity;
 - (b) There is no reasonable alternative to meet the public need for the proposed use or activity;
 - (c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;
 - (d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia river, Willapa Bay and Grays Harbor estuaries, and Olympic national park;
 - (e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
 - (f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;
 - (g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and
 - (h) The use or activity complies with all applicable local, state, and federal laws and regulations.

RCW 43.372.040 (4) (a-h):

- (4) The marine management plan must be developed and implemented in a manner that:
 - (a) Recognizes and respects existing uses and tribal treaty rights;
 - (b) Promotes protection and restoration of ecosystem processes to a level that will enable long-term sustainable production of ecosystem goods and services;
 - (c) Addresses potential impacts of climate change and sea level rise upon current and projected marine waters uses and shoreline and coastal impacts;
 - (d) Fosters and encourages sustainable uses that provide economic opportunity without significant adverse environmental impacts;
 - (e) Preserves and enhances public access;
 - (f) Protects and encourages working waterfronts and supports the infrastructure necessary to sustain marine industry, commercial shipping, shellfish aquaculture, and other water-dependent uses;
 - (g) Fosters public participation in decision making and significant involvement of communities adjacent to the state's marine waters; and
 - (h) Integrates existing management plans and authorities and makes recommendations for aligning plans to the extent practicable.

1. Issues Related to All New Uses

1.1. Economic Recommendations

Problem Statement

New uses (including significant expansion of existing uses) may have acute and cumulative impacts on the local economy, both positive and negative. There is concern that some new uses could have short-term economic gains followed by long-term economic loss due to displacement of current uses by short-term projects (such as pilot projects or abandoned or failed projects). Additionally, a new use could result in national or global economic gain, but a significant economic loss at the local level. Local stakeholders and affected parties would like a clear understanding of the potential economic impacts of new uses, and a clear understanding of the interactions with existing uses, prior to the use being permitted.

Draft Recommendations

1.1.1. Prior to permitting new uses or expansions of existing uses which may cause impacts to either existing uses or to the local economy, an economic assessment should be completed. When appropriate, the economic assessment should build on the baseline information of available economic and social studies (including but not limited to the Cascade Economics Assessment).

The assessment should be prepared by an independent third party and should include:

a) Process

- Early stakeholder notice, including a detailed description of the project proposal.
- A designated time period for review and comment that provides time for stakeholder input at key stages throughout the project.
- A clear timeframe for response to comments.
- Expert review of the assessment and the stakeholder comments. The project proponent will be given an opportunity to review and respond to the assessment, stakeholder comments, and the independent review.

b) Content

- An assessment of the short-term and long-term economic costs and benefits to the affected community, including social costs and benefits. The assessment should specifically address the social costs to vulnerable ocean users, and the potential impacts on taxpayers (and, if appropriate, ratepayers). The determination of costs and benefits should not be completed without input from local stakeholders and affected parties.
- As appropriate, an assessment of the costs and benefits to the larger economy (state, national, global).

- An assessment of various scenarios which include the full project footprint, and scenarios where the new use fails and is abandoned or decommissioned.
- A discussion of how the project complies with statutory requirements, including but not limited to RCW 43.143.030 (e): *All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;*

1.2. Infrastructure and Technology Recommendations

Problem Statement

New ocean¹ infrastructure presents many concerns to coastal communities, ranging from loss of views and aesthetics to safety concerns.

New infrastructure may pose an increased risk to the navigational safety of all vessel types and sizes. Impacts may be both direct impacts (such as risk of collision, damage to or loss of fishing gear, and reduction or elimination of existing fishing operations and maritime commerce) and indirect impacts (such as impacts from changes in ocean conditions or traffic patterns). New uses that disturb the seafloor could harm or bury cultural or historic resources, habitat for marine species, and fishing grounds. New uses could also create hazardous ocean conditions that endanger existing uses and infrastructure.

Some types of fishing gear are mobile, especially crab pots placed in Washington's nearshore. New infrastructure in these areas presents an increased risk for entangling fishing gear. Gear entanglement results in increased costs for fishing and can cause unintended mortality or harm to marine life.

Harsh coastal conditions on the Washington Coast, including storms and tsunamis, may harm or destroy infrastructure. If a structure becomes obsolete, is destroyed, or is abandoned, there are concerns about the ongoing impacts of leaving unmaintained structures in place, the impacts of the removal process, associated debris, and footprint scars.

Draft Recommendations

1.2.1. Navigational Safety

WCMAC recommends that a vessel traffic risk assessment or a risk-based modelling analysis be presented or prepared prior to permitting to evaluate navigational safety. WCMAC recommends that permitting agencies deny permits that have an adverse impact on navigational safety.

¹ The terms "ocean" and "offshore" throughout this document include estuaries

1.2.2. Dredge Disposal and Wave Amplification

WCMAC recommends implementation of recommendations established by the updated Mouth of the Columbia River Regional Sediment Management Plan and local Shoreline Master Programs that address navigation safety and dredge disposal. WCMAC recommends that dredge disposal should be sited in areas where the disposal will provide beneficial use to the greatest extent possible.

1.2.3. Historic and Cultural Resources

WCMAC recommends that, for new uses that will impact the ocean floor, a high-resolution seafloor archeological assessment be conducted prior to permitting, and that the project be sited and mitigated to avoid and preserve historic and cultural resources.

1.2.4. Coastal Erosion and Sea-Level Rise

WCMAC recommends that state agencies continue to monitor erosion and sea-level rise on the Washington coast. The effects of projected coastal erosion, future sea-level rise, and other climate change impacts should be evaluated to determine the long-term suitability of a proposed new use prior to permitting.

1.2.5. Aesthetics

WCMAC recommends that the environmental review process require conceptual site drawings of visual impacts and assess the effect new infrastructure will have on views, aesthetics, and public access.

1.2.6. Structure Survivability

WCMAC recommends that a survivability assessment be required for all new ocean structures. Permit conditions should include requirements that comply with RCW 43.143.030(2)(g): *Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed.*

1.2.7. Entangled Fishing Gear

WCMAC recommends that permit conditions for new uses require a plan for monitoring for entangled fishing gear or other debris, including a plan to mitigate impacts. Mitigation measures should include recovery and return of identifiable fishing gear.

1.2.8. New Structures

WCMAC recommends that, at a minimum, proposals for any new structures (including the creation of artificial reefs) consider the information in the Marine Spatial Plan, follow the MSP recommendations, and comply with the criteria described in RCW 43.143.030(2).

1.3. Ecological Recommendations

Commented [s1]: WCMAC asked the question of whether aesthetics are already covered by SEPA. The answer is yes:

The SEPA checklist requires projects provide information on both [aesthetic impacts](#) and [public access](#) - WAC 197-11-960 (see Number 10 and 12 in the checklist).

Additionally, ORMA and its regulations requires consideration of impacts to recreation, tourism, and aesthetics (RCW 43.143.030 and WAC 173-26-360(7)(s)). To receive a permit, ORMA criteria include the following requirements: that there be no long-term significant adverse impacts to coastal or marine resources or uses and that reasonable steps are taken to avoid and minimize adverse environmental impacts (RCW 42.143.030).

Problem Statement

New uses raise ecological concerns, including impacts to species and habitats; changes to migration routes and physical processes; degradation of water quality; impacts to the food web; and introduction of invasive species. In addition, offshore uses are often supported by on-shore infrastructure, and it is important to understand and assess the positive and negative impacts of changes to infrastructure on local coastal communities.

Draft Recommendations

1.3.1. WCMAC recommends that, prior to permitting new uses or expansions of existing uses, an environmental assessment should be completed. Environmental assessments required under SEPA or NEPA should thoroughly address:

- Degradation of sensitive and important habitat for representative important species, including, but not limited to, ESA listed and commercially, recreationally and ecologically valuable species.
- Potential for direct injury or harm to species, including ESA listed and commercially valuable species (e.g. strikes, entanglement, etc.), or indirect injury related to exposure to noise, light, vibration, electromagnetic fields or other related stressors associated with the new use.
- Alteration or impairment of existing animal migration routes.
- Degradation of water quality (chemicals, petroleum products, nutrients, oxygen, temperature, acidification, etc.).
- Changes in physical processes, including, but not limited to, currents and waves, sediment processes, coastal erosion and accretion, electromagnetic fields, acoustics and wave amplification.
- Unintended impacts, including, but not limited to, impacts to the food chain, changes to physical processes, introduction of disease or genetic pollution, and access to existing resources.
- Inadvertent introduction of invasive species, organisms, etc.
- Comparison of alternatives and best-available technologies, if appropriate.
- Evaluation of impacts and demands on existing infrastructure, both on and offshore.

If environmental review is not required by SEPA or NEPA, WCMAC recommends that state and local agencies ensure that these concerns are addressed by applicants for new uses.

1.3.2. WCMAC recommends that all environmental assessments include a process for stakeholder input, including scoping, review of draft assessments, and a period for public comment. Agencies should establish adequate time for notice and public comment based on the complexity of the project.

1.3.3. WCMAC recommends applicants be held liable for damages and provide mitigation of adverse impacts to coastal resources or uses, consistent with existing law.

- 1.3.4. For projects that pose a risk for invasive species introduction, WCMAC recommends applicants be required to prepare a prevention, monitoring and control plan.

2. Additional Issues Related to Specific New Uses

2.1. OFFSHORE AQUACULTURE ISSUES

Problem Statement

Offshore aquaculture presents unique concerns. The infrastructure and activities from offshore aquaculture could harm other species, particularly predators such as pinnipeds, cetaceans, and sharks. The infrastructure could also alter habitat and food sources for marine species. Offshore aquaculture may introduce new species, genetic mixing, and diseases into the environment, potentially harming existing populations and ecosystems. Fin-fish aquaculture could have economic, ecological and spatial impacts on existing fishing, and there is currently no feasible recovery method for escaped fin-fish from net-pen aquaculture.

Draft Recommendations

- 2.1.1. WCMAC recommends that applicants for offshore aquaculture prepare prevention, monitoring and response plans that address escapement, disease, and nutrient pollution.
- 2.1.2. WCMAC recommends that applicants for offshore aquaculture avoid and minimize impacts to pinnipeds, cetaceans, sharks and other species through facility design, siting and operation.
- 2.1.3. WCMAC recommends that agencies deny permits for offshore aquaculture facilities with species that pose a significant risk of introducing disease, impairing fish health, or potentially introducing genetic pollution into the area, in accordance with WAC 276.76.100: *A permit may be denied based on the determination by the director of significant genetic, ecological or fish health risks of the proposed fish rearing program on naturally occurring fish and wildlife, their habitat or other existing fish rearing programs.*
- 2.1.4. WCMAC recommends that pesticide controls should undergo rigorous safety analysis before their use is allowed.

Commented [s2]: WCMAC may want to develop a recommendation to the Governor or Legislature to address concerns about non-native finfish in offshore aquaculture, but it will not go in the MSP recommendations because 1) aquaculture is a preferred use under the Shoreline Management Act, and 2) WAC 220.76.100 regarding Marine Finfish aquaculture states that a permit may be denied if a new permit negatively effects fishing.

3. Additional Issues Related to Protecting and Preserving Existing Sustainable Uses

Problem Statement

New uses could irrevocably change coastal communities. While some new uses may bring positive changes, there are concerns that new uses could also harm communities in ways that are difficult to repair. There is a concern that harmful changes are likely to occur without adequate stakeholder involvement and input during all aspects of the decision-making process for new development.

The Washington coast has unique limitations on usage, including a marine sanctuary, areas of tribal sovereignty, restrictions by the US military, and severe weather. Ocean space is limited and already hosts multiple uses. Additional spatial displacement along the Washington coast could place an undue burden on existing uses, including fishing. New uses could preempt existing fishing space, resulting in smaller fishing areas. Smaller fishing areas may lead to overcrowded and dangerous fishing activities as well as reduced catch.

There is concern that new uses could degrade or alter existing sustainable uses in the marine waters, including fisheries and aquaculture, in a variety of ways (impairment of estuary functions, degradation of water quality, impacts to fish and wildlife habitat, etc.). This could result in reduced harvest or reduced profitability for existing uses. New uses could also degrade recreational opportunities, public access, and aesthetics.

Draft Recommendations

3.1.1. WCMAC recommends public and stakeholder involvement in all aspects of project development and review, including:

- working collaboratively with stakeholders, including but not limited to fishing, aquaculture, maritime commerce, conservation, tourism and recreation interests;
- providing timely and effective notice; and
- initiating both formal and informal pre-application discussions between stakeholders and applicants.

3.1.2. WCMAC recommends a project review process that includes existing uses, appropriate agencies, and project proponents. The process should involve established fishing advisory groups, and should identify potential adverse impacts on commercial and recreational fisheries and opportunities to avoid, reduce, or mitigate impacts. Fishing advisory boards comprised of representatives of the affected fisheries could also be created for specific projects or sites.

3.1.3. WCMAC recommends that project proponents use WCMAC as a forum for early notification and discussion of potential proposals, including impacts to habitat, impacts on existing uses, project location and maximum size, etc.

3.1.4. WCMAC recommends that through the permitting and review process, applicants prepare site specific impact assessments addressing impacts to current uses, including fishing, recreation, and aquaculture. The assessment should also describe how the project will comply with local Shoreline Master Programs.

4. Adaptive Management and Data Gathering

Problem Statement

As conditions change or as new information is gathered, it is important to update baseline information, apply adaptive management, and update the MSP.

4.1.1. WCMAC recommends that state agencies identify a systematic process to update existing datasets, gather new data to keep baseline information current, and fill data gaps.

4.1.2. WCMAC recommends that, based on new information or changing conditions, state agencies identify areas of the MSP's recommendations where changes may be needed, and recommend changes to the MSP or to existing implementation activities.