

Appendix E. CZMA Federal Consistency

Introduction

This Appendix provides context on the provisions of the Marine Spatial Plan (MSP) for Washington's Pacific Coast for federal consistency purposes under the federal Coastal Zone Management Act (CZMA) and federal consistency regulations at 15 CFR Part 930. This includes standards that are in the MSP that are also enforceable policies for CZMA review and necessary data and information for certain CZMA federal consistency reviews. Parts of this Appendix are taken verbatim from relevant parts of the main body of the MSP.

This Appendix does not alter, nor duplicate, the already approved list of NOAA-approved enforceable policies for Washington's Coastal Zone Management Program (CZMP). For the list of already approved enforceable policies, please contact Washington's Coastal Zone Management Program.¹

The CZMA requires that certain federal activities² that affect coastal uses or resources be conducted in a manner consistent with the enforceable policies of a state's federally-approved Coastal Zone Management Program. Once NOAA approves the incorporation of the new enforceable policies into the Washington Coastal Zone Management Program (CZMP), the Department of Ecology will apply the new enforceable policies listed below when reviewing federal activities for new ocean uses³ on Washington's Pacific Coast for consistency with the Washington CZMP.

Washington's Marine Waters Planning and Management Act, or marine planning law (RCW 43.372), provides the authority and directive for the state to create plans, including new enforceable policies, and the requirement to implement the plan via existing processes. The proposed, new enforceable policies contained in the MSP include:

1. Important, Sensitive and Unique areas (ISUs) and associated protection standards
2. Fisheries protection standards

The MSP also provides information and procedural requirements to support Ecology's evaluation of whether the enforceable policies of Washington's CZMP have been met. This includes new, proposed enforceable policies as well as existing approved enforceable policies, including those contained within the Ocean Resources Management Act (ORMA) (RCW 43.143) and the Ocean Management Guidelines (WAC 173-26-360). Since these existing regulations

¹ Information on Washington's Coastal Management Program is available at: <http://www.ecy.wa.gov/programs/sea/czm/index.html>

² Under the CZMA and federal regulations, federal activities includes activities by federal agencies, federally permitted or licensed activities, and federally funded projects.

³ Ocean uses is defined by WAC 173-26-360(3). See specific definitions for example uses in Appendix B. The term "new" is intended to distinguish future ocean use proposals from those uses that are currently permitted or that are undergoing permitting prior to the adoption of the final MSP. WAC 173-26-360(4) describes exemptions for fisheries, recreation, and other existing commercial uses of renewable marine or ocean resources.

apply to various phases of project review, they are integrated and referenced throughout the relevant sections of Chapter 4 – MSP Management Framework, including:

- Project and site-specific information requirements – Section 4.4, particularly table 4.4-1
- Effects evaluation – Section 4.5
- General review standards – Section 4.6
- Plans - Section 4.7
- Specific use review standards – Section 4.8, particularly table 4.8-1

The MSP provides recommendations on: ways to avoid and minimize impacts; procedures for coordination and consultation (Section 4.2.1); spatial data considerations (Section 4.3); and project siting, design, engineering, construction and operation (Section 4.6.3). The MSP contains further guidance on the information, effects, plans, and processes that will assist local governments in implementing the existing Ocean Management Guidelines.

The following sections of this Appendix provide more information on:

- The authority provided in state law for developing enforceable policies.
- How the MSP will be implemented (also referred to as the enforceable mechanism).
- The new proposed enforceable policies, including a summary table and the complete text of the proposed enforceable policies.

Washington’s Authority to Develop and Implement Policies in the Marine Spatial Plan

The state’s marine planning law (RCW 43.372) outlines the purpose, authority and intent for creation and implementation of state marine plans, also referred to as Marine Spatial Plans or plan(s). This state law creates the authority and directive for the state to create and use the plan via existing processes. The state law directs state agencies to use the Marine Spatial Plan (MSP) for Washington’s Pacific Coast to develop policies that can guide the review of and decisions about new ocean uses which can be implemented through existing state and local authorizations and processes.

Specifically, this law:

- Directs the state to use the MSP to guide state and local decisions among uses for marine waters. (RCW 43.372.005(3)).
- Directs the state to use existing state and local authorities and *additional management measures* (e.g. policies) to implement the plan. The law also requires state and local governments to make decisions consistent with the final, adopted MSP (through their various existing authorities – e.g. permits, leases, rights of way, and use authorizations).

Relevant legal citations:

- **RCW 43.372.005(3)** It is also the purpose of this chapter to establish policies to guide state agencies and local governments when exercising jurisdiction over proposed uses and activities in these waters.
- **RCW 43.372.040(6)** The marine management plan must include but not be limited to:
 - (b) Using and relying upon existing plans and processes and additional management measures to guide decisions among uses proposed for specific geographic areas of the state's marine and estuarine waters consistent with applicable state laws and programs that control or address developments in the state's marine waters;
 - (e) An implementation strategy describing how the plan's management measures and other provisions will be considered and implemented through existing state and local authorities; and
 - (f) A framework for coordinating state agency and local government review of proposed renewable energy development uses requiring multiple permits and other approvals that provide for the timely review and action upon renewable energy development proposals while ensuring protection of sensitive resources and minimizing impacts to other existing or projected uses in the area.
- **RCW 43.372.050(1)** Upon the adoption of the marine management plan under RCW 43.372.040, each state agency and local government must make decisions in a manner that ensures consistency with applicable legal authorities and conformance with the applicable provisions of the marine management plan to the greatest extent possible.
- Ensures state and local governments use their existing authorities to apply provisions of the MSP. This means, for example, the MSP should not create a new, separate permit. Rather, existing state and local permit processes must incorporate and adapt to be consistent with the MSP. The law also protects existing permitted uses and projects from the MSP requirements. This, in turn, means that the marine planning law intended that future projects comply with the MSP.

Relevant legal citation:

 - **RCW 43.372.060** No authority is created under this chapter to affect in any way any project, use, or activity in the state's marine waters existing prior to or during the development and review of the marine management plan. No authority is created under this chapter to supersede the current authority of any state agency or local government.
- Establishes policies for development and implementation of the final adopted MSP. This includes policy statements requiring (1) protection of sensitive and unique marine life and habitats and (2) recognizing and stewarding the important economic, social, historic, and cultural uses with a specific focus on fisheries and shellfish aquaculture.

Relevant legal citations:

- **RCW 43.372.005(3)** It is also the purpose of this chapter to establish policies to guide state agencies and local governments when exercising jurisdiction over proposed uses and activities in these waters.
- **RCW 43.372.005(3)** purpose lists the specific policies for the state to address in a plan, including:
 - (h) Establish an ocean stewardship policy that takes into account the existing natural, social, cultural, historic, and economic uses;
 - (i) Recognize that commercial, tribal, and recreational fisheries, and shellfish aquaculture are an integral part of our state's culture and contribute substantial economic benefits;
 - (j) Value biodiversity and ecosystem health, and protect special, sensitive, or unique estuarine and marine life and habitats, including important spawning, rearing, and migration areas for finfish, marine mammals, and productive shellfish habitats;
- **RCW 43.372.040(4)** The marine management plan must be developed and implemented in a manner that:
 - (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;
 - (m) Fulfill the state's public trust and tribal treaty trust responsibilities in managing the state's ocean waters in a sustainable manner for current and future generations.

How MSP Policies will be Implemented by the State

Given the purpose, authority, and intent of the marine planning law, all state and local agencies are required to implement and adhere to the adopted Marine Spatial Plan (MSP) through existing regulatory and decision-making processes at the state and local level. This section summarizes how the MSP policies will be implemented by state and local governments.

State agencies

MSP policies will be incorporated, where applicable, through various authorizations issued by a number of state agencies, such as: aquatic land leases (i.e. use authorizations); right-of-way easements for the Seashore Conservation Area; hydraulic project approvals; and water quality permits. More information on these state authorizations can be found in the MSP Management Framework [see sections 4.1.4 and 4.1.5].

Local governments

The MSP provides information, analyses, recommendations, and policies that must be incorporated in local plans, regulations, and permit processes, particularly through local Shoreline Master Programs (SMPs) under the Shoreline Management Act. Local SMPs on Washington's Pacific Coast are also responsible for incorporating the Ocean Management Guidelines (WAC 173-26-360), which implement the Ocean Resources Management Act (ORMA) (RCW 43.143) into their SMPs. As stated in the marine planning law (RCW 43.372.050(1)), to make decisions consistent with the MSP, local governments on Washington's Pacific Coast will need to:

1. Update their local programs and incorporate information, analyses, recommendations, and policies from the final, adopted MSP.
2. Once incorporated, issue shoreline permits for new ocean uses involving development (as defined in RCW 90.58.030(3)(a)) that are consistent with the updated SMP and, therefore, the MSP.

Compliance with the MSP

The marine planning law also requires Ecology, with the interagency team, to monitor compliance with the plan, identify any substantial inconsistencies, and make recommendations to the state agency or local government for resolving inconsistencies (RCW 43.372.050(2)). This includes Ecology reporting on inconsistencies to the Legislature no later than four years after the adoption of the plan.

Relevant legal citations:

- **RCW 43.372.050** (2) The director of the department of ecology, in coordination with the team, shall periodically review existing management plans maintained by state agencies and local governments that cover the same marine waters as the marine management plan under RCW 43.372.040, and for any substantial inconsistency with the marine management plan the director shall make recommendations to the agency or to the local government for revisions to eliminate the inconsistency.

(3) Not later than four years following adoption of the marine management plan under RCW 43.372.040, the department of ecology, in coordination with the team, shall report to the appropriate marine waters committees in the senate and house of representatives describing provisions of existing management plans that are substantially inconsistent with the marine management plan under RCW 43.372.040, and making recommendations for eliminating the inconsistency.

New Enforceable Policies for Purposes of Federal Consistency

Table E-1 below identifies the new enforceable policies for Washington’s Coastal Zone Management Program that were developed as part of the MSP for Washington’s Pacific Coast, including a summary of each policy, relevant legal language regarding authority to develop the enforceable policy, and the legal citation. The full text of each enforceable policy is included below the table. The enforceable policy text is the same language included in the plan.

Table E-1 – Summary of Proposed New Enforceable Policies		
Name/Description of Enforceable Policy	Policy Citation	Enforceable Mechanisms
<p>Establishes Important Sensitive and Unique (ISUs) Areas and Standards</p> <ul style="list-style-type: none"> • Defines criteria for Important, Sensitive and Unique areas. • Designates a list of Ecological and Historic, Cultural, and Infrastructure ISUs and provides maps of best available data on ISU locations. <p>Creates a protection standard and definition for adverse effects for ISUs.</p>	<p>Washington Marine Spatial Plan, Section <u>4.3.3 Important, Sensitive and Unique Areas (ISUs)</u></p>	<p>Washington Marine Planning Law - RCW 43.372</p> <p>Specifically 43.372.040(6)(c):</p> <p>The plan must include, but not be limited to...</p> <p>(c) A series of maps that, at a minimum, summarize available data on: The key ecological aspects of the marine ecosystem, including physical and biological characteristics, as well as areas that are environmentally sensitive or contain unique or sensitive species or biological communities that must be conserved and warrant protective measures; human uses of marine waters, particularly areas with high value for fishing, shellfish aquaculture, recreation, and maritime commerce; and appropriate locations with high potential for renewable energy production with minimal potential for conflicts with other existing uses or sensitive environments;</p> <p>-also-</p> <p>Washington Ocean Resources Management Act (ORMA) – RCW 43.143</p> <p>Specifically RCW 43.143.030(2):</p> <p>(2) Uses or activities...that require permits...may be permitted only if the criteria below are met or exceeded:</p> <p>(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;</p> <p>(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.</p>

Table E-1 – Summary of Proposed New Enforceable Policies		
Name/Description of Enforceable Policy	Policy Citation	Enforceable Mechanisms
<p>Establishes a Fisheries Protection Standard</p> <ul style="list-style-type: none"> • Reiterates the existing state protection standards for fisheries in state law (contained in ORMA and marine planning laws). • Defines adverse effects to fisheries. • Lists criteria to minimize impacts to fishing. 	<p>Washington Marine Spatial Plan, (Section TBD), <u>Fisheries Use Protection Standards</u></p>	<p>Washington Marine Planning Law - RCW 43.372</p> <p>Specifically RCW 43.372.040(8):</p> <p>(8) Any provision of the marine management plan that does not have as its primary purpose the management of commercial or recreational fishing but that has an impact on this fishing must minimize the negative impacts on the fishing. The team must accord substantial weight to recommendations from the director of the department of fish and wildlife for plan revisions to minimize the negative impacts.</p> <p>-also-</p> <p>Washington Ocean Resources Management Act (ORMA) – RCW 43.143</p> <p>Specifically RCW 43.143.030(2):</p> <p>(2) Uses or activities...that require permits...may be permitted only if the criteria below are met or exceeded:</p> <p>(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses.</p> <p>(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.</p>

Necessary Data and Information

For federal permit, license or lease applicants, NOAA’s regulations allow a state to identify additional necessary data and information a state believes is needed to start the CZMA six-month review period. The MSP Management Framework at 4.2.1.5 identifies and describes the Necessary Data and Information⁴ by Washington’s CZMP for purposes of starting the CZMA 6-month review period for federal license or permit activities under [15 C.F.R. part 930](#), subpart D, and OCS Plans under [15 C.F.R part 930](#), subpart E, pursuant to 15 C.F.R. [930.58\(a\)\(3\)](#). The table below summarizes the Necessary Data and Information and, once approved by NOAA, which will be incorporated into Washington’s CZMP.

Summary of Necessary Data and Information	
Necessary Data and Information	Specific process requirements detailed in Management Framework (Chapter 4) of Marine Spatial Plan for Washington’s Pacific Coast
A copy of the notice provided to Washington Coastal Marine Advisory Council.	See Section 4.2.1.3
A copy of the sign-in and summary from meeting with Washington Department of Fish and Wildlife and affected fisheries stakeholders.	See Section 4.2.1.4

Enforceable Policy Language: excerpt from MSP Management Framework

4.3.3 Important, Sensitive and Unique Areas (ISUs)

State law requires the Marine Spatial Plan to identify environmentally sensitive and unique resources that warrant protective measures (RCW 43.372.040(6)(c)). Therefore, the plan is designating Important, Sensitive and Unique (ISU) Areas in state waters that have high conservation value, historic value or areas with key infrastructure. The ISUs include standards to maintain the high values of the areas and protect the ISUs from adverse effects of offshore development,⁵ while allowing existing compatible uses such as fishing.

As part of the Marine Spatial Plan the state is developing maps of ISU areas based on the available information and data. However, it is important to note that the designation of ISUs and the application of the enforceable protective standards is habitat and resource based, wherever

⁴ Other existing Necessary Data and Information is described in Washington’s approved Coastal Program document.

⁵ Development under the jurisdiction of the Shoreline Management Act is defined at RCW 90.58.030(3)(a) as “a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.” For purposes of the MSP, “offshore development” means any development occurring in the plan study area that also meets the definition of a new ocean use.

these habitats or resources occur within state waters. The enforceable protective standards would apply to any designated ISU whether mapped or not. The ISU maps are not part of the enforceable standards; rather the ISU maps are intended to assist the state, local governments and applicants by showing known locations of ISU areas.

1. ISU Definitions

ISUs are specific areas in state waters that meet one or more of the following criteria:

- a. Areas that are environmentally sensitive or contain unique or sensitive species or biological communities that must be conserved and warrant protective measures [RCW 43.372.040(6)(c)].
- b. Areas with known sensitivity and where the best available science indicates the potential for offshore development to cause irreparable harm to the habitats, species, or cultural resources.
- c. Areas with features that have limited, fixed and known occurrence.
- d. Areas with inherent risk or infrastructure incompatibilities (e.g. buoys or cables).

2. ISU Designations

The following ISUs are established using current knowledge and available data developed through the MSP process.

a. Ecological ISUs

- i. Biogenic Habitats: Aquatic vegetation, corals, and sponges
- ii. Rocky Reefs
- iii. Seabird colonies: islands and rocks used for foraging and nesting by seabirds.
- iv. Pinniped haul-outs
- v. Forage fish spawning areas: intertidal areas used for spawning by herring, smelt or other forage fish.

b. Historic, Cultural and Infrastructure ISUs

- i. Historic and archaeological sites:
Structures or sites over 45 years old that are listed or eligible for listing in local, state or national preservation registers (e.g. shipwrecks or lighthouses); or
Artifacts or other material evidence of tribal or historic use or occupation (e.g. burials, village sites, or middens).
- ii. Buoys and submarine cables:
Fixed infrastructure such as navigation or monitoring buoys, fiber optic cables, electrical transmission cables, other fixed monitoring equipment in the marine

environment (e.g. hydrophones) and any associated mooring lines, anchors or other equipment.

Coastal estuaries, including Grays Harbor and Willapa Bay, are important ecological areas and are heavily used by existing uses and their associated infrastructure. They are home to critical saltwater habitats⁶ and Priority Habitats and Species,⁷ such as spawning and juvenile rearing areas, aquatic habitats (e.g. eelgrass, kelp, mudflats, and shellfish beds), state-listed or candidate species, vulnerable aggregations, and species of commercial, recreational or tribal importance. While estuaries themselves are not designated as an ISU, many ISUs occur within estuaries. Yet, the resolution and availability of current data is inadequate to aid in detailed siting within estuaries. Therefore, a more detailed and finer-scaled analysis for proposed projects will be required to “provide special protection to the marine life and resources of the estuaries and to ensure all reasonable steps are taken to avoid and minimize impacts to the habitats, species, and uses in estuaries” (RCW 43.143.030(2)(d) and RCW 43.143.030(2)(e)).

The state has developed maps of ISUs using the best available data at the time of this Plan (see Appendix A: Maps 59-74). These maps are intended to assist applicants in identifying where ISUs exist. However, ISU protection standards will apply to any ISU, wherever it is identified in state waters. It is the responsibility of applicants to verify whether ISUs exist in their proposed project area and to demonstrate protection standards will be met. As finer resolution or updated data becomes available, the state may update the ISU maps, which may include adding, deleting or updating the distribution of an ISU.

Additional buffers may be appropriate to protect ISU resources from adverse effects. Project developers shall consult with the Washington Department of Fish and Wildlife on recommended buffers for Ecological ISUs associated with their proposed project prior to filing application materials with local or state agencies. Project developers shall consult with the Washington Department of Archaeological and Historical Preservation and tribal preservation officers on further identification and protection of cultural or historical artifacts.

3. ISU Protection Standards and Enforceable Policies

Once the state designates an ISU under this Marine Spatial Plan (RCW 43.372.040(6)(c)), state agencies and local governments must apply the following ISU adverse effects and protection standards in their decisions for new ocean use developments to the greatest extent possible.

a. Protection Standard for ISUs

An applicant for proposed new ocean uses involving offshore development, as defined in the Shoreline Management Act ([RCW 90.58.030\(3\)\(a\)](#)), must demonstrate that the project will have no adverse effects on an ISU located at the project site and to off-site ISUs potentially affected by the project.

An applicant may overcome the ISU protection standard, using site-specific surveys, scientific data and analysis, which demonstrate either:

⁶ “Critical Saltwater Habitat” is defined in Shoreline Management Regulations at: WAC 173-26-221(2)(c)(iii)(C).

⁷ Washington Department of Fish and Wildlife identifies and maintains information about “Priority Habitats and Species”, more information at: <http://wdfw.wa.gov/conservation/phs/>.

- i. The current ISU maps do not accurately characterize the resource or use or the project area (mapped or not mapped) do not contain an ISU resource or use; or
- ii. The weight of scientific evidence clearly indicates that the project will cause no adverse effects to the resources of the ISU.

b. Adverse effects standards for Ecological ISUs:

Adverse effects for ecological ISUs is defined as either:

- i. Degradation of ecosystem function and integrity, including, but not limited to, direct habitat damage, burial of habitat, habitat erosion, and reduction in biological diversity.
- ii. Degradation of living marine organisms, including, but not limited to, abundance, individual growth, density, species diversity, and species behavior.

c. Adverse effects standards for historic, cultural or fixed infrastructure ISUs:

Adverse effects for historic, cultural or infrastructure resources ISUs is defined as any of the following:

- i. Direct impact by dredging, drilling, dumping, or filling.
- ii. Alteration, destruction or defacement of historic, archaeological or cultural artifacts.
- iii. Direct impacts from placement or maintenance of new, temporary or permanent structures in areas with existing infrastructure or historic, archaeological or cultural artifacts.

4.6.3 Fisheries Use Protection Standards

The marine spatial planning law requires: “Any provision of the marine management plan that does not have as its primary purpose the management of commercial or recreational fishing but that has an impact on this fishing must minimize the negative impacts on the fishing.” ([RCW 43.372.040\(8\)](#)). To accomplish this, the plan sets forth a requirement for consulting with Washington Department of Fish and Wildlife and individuals participating in affected commercial and recreational fisheries to identify a proposed project’s potential adverse effects to fisheries and opportunities to avoid, reduce or minimize impacts (See section 4.2.1.4). The plan also establishes additional protection standards for fisheries that align with this requirement to minimize impacts on fisheries and with other existing state requirements to protect fisheries (RCW 43.143.030(2)). Applicants must also consult with each of the coastal tribes to understand the proposed project’s potential adverse effects to tribal uses, including fishing (RCW 43.372.040(2)(a)).

a. Protection Standards for Fisheries

Applicants for proposed new ocean uses involving offshore development, as defined in the Shoreline Management Act (RCW 90.58.030(3)(a)), must demonstrate their project meets the following standards to protect fisheries located at the project site and nearby from adverse effects, including:

- i. There are no likely long-term significant adverse effects to fisheries. (RCW 43.143.030(2)(c))
- ii. All reasonable steps are taken to avoid and minimize social and economic impacts to fishing. (RCW 43.143.030(2)(e))

In addition to consulting with Washington Department of Fish and Wildlife and individuals participating in affected commercial and recreational fisheries, the following must be considered in determining the possible adverse effects on commercial and recreational fisheries and whether all reasonable steps have been taken to avoid and minimize adverse effects to fisheries. The following considerations are applicable to all proposals for new ocean use developments, in all use areas, unless otherwise noted.

- Minimize the number of and size of anchors. Space structures for greater compatibility with existing uses and bury cables in the seafloor and through the shoreline. [WCMAC 1.2.10]
- Minimize risk of entangling fishing gear from new structures installed in the seafloor or placed in the water.
- Minimize the displacement of fishers from traditional fishing areas, and the related impact on the travel distance, routing and navigation safety in order to fish in alternative areas.
- Minimize the compression of fishing effort caused by the reduction in the areas normally accessible to fishers.
- Minimize the economic impact resulting from the reduction in area available for commercial and recreational fishing for the effected sectors and ports.
- Limit the number and size of projects that are located in an area to minimize the impact on a particular port, sector, or fishery.
- Consider the distribution of projects and their cumulative effects.
- Other reasonable and relevant considerations as determined by the fisheries consultation process and specifics of the proposed project.

b. Definition of Adverse Effect for Fisheries:

Adverse effects can be direct, indirect or cumulative. Adverse effects for commercial or recreational fisheries is defined as any of the following:

- i. A significant reduction in the access of commercial or recreational fisheries to the resource used by any fishery or a fishing community(s).
- ii. A significant increase in the risk to entangle fishing gear.
- iii. A significant reduction in navigation safety for commercial and recreational fisheries.
- iv. Environmental harm that significantly reduces quality or quantity of marine resources available for harvest.