

Washington's Pacific Coast: Shoreline Master Programs, Federal Consistency, and Marine Spatial Planning

This document provides background information and answers to frequently asked questions on Washington's Pacific Coast related to the relationship among local Shoreline Master Programs, the state's federal consistency authority under the Coastal Zone Management Act (CZMA), and marine spatial planning (MSP).

Background

Washington manages its coastal zone through a partnership with the federal government established under the federal Coastal Zone Management Act (CZMA). Passed in 1972, the Act calls for the "effective management, beneficial use, protection, and development of the coastal zone", and encourages state involvement in achieving those goals. In 1976, Washington became the first state to receive federal approval of a Coastal Zone Management Program (CZMP). The Department of Ecology's Shorelands and Environmental Assistance Program is responsible for administering Washington's program.

Benefits of a federally approved coastal program include eligibility for federal coastal zone grants and federal consistency review authority over some federal agency actions. The federal consistency component ensures that federal actions with reasonably foreseeable effects on coastal uses and resources of the state are consistent with the enforceable policies of a state's approved coastal management program.

The enforceable policies of Washington's CZMP include provisions from the:

- Shoreline Management Act (SMA)
- State Environmental Policy Act (SEPA)
- Clean Water Act
- Clean Air Act
- Energy Facility Site Evaluation Council (EFSEC)
- Ocean Resource Management Act (ORMA)

Under the Shoreline Management Act (SMA), cities and counties with shorelines develop local shoreline master programs (SMPs) in partnership with the local community and Ecology. They must comply with the SMA (RCW 90.58) and its regulations (WAC 173-26). The Ocean Management Guidelines (WAC 173-26-360) are state regulations that provide specific guidance on how to address ocean uses within a local SMP.

Largely driven by concern over proposals for offshore renewable energy, Washington adopted the Marine Waters Planning and Management Act in 2010 (RCW 43.372). This state law employs Marine Spatial Planning (MSP) to develop non-regulatory plans for addressing uses in marine waters. Planning for Washington's Pacific Coast began in Summer 2012 and is expected to be completed by December 2016. This MSP aims to ensure that future developments related to marine activities and uses are appropriately sited, so existing activities and new development can successfully coexist, while maintaining a productive, healthy marine ecosystem. Therefore, the plan will identify locations where potential new uses should not be sited, could be suitable, or would be preferred.

Frequently Asked Questions

1. What is the jurisdiction of Washington State and local governments under the Shoreline Management Act?

Washington State has jurisdiction in state waters from the shore out to three nautical miles (n.m.). The regulatory function of a local Shoreline Master Program depends on a local jurisdiction's geographic boundaries. For counties on Washington's Pacific Coast, westward regulatory limit of a Shoreline Master Program is the same as the extent of Washington's state waters -- three n.m. offshore.

The federal government maintains jurisdiction from 3 to 200 n.m. offshore. The Shoreline Management Act, Ocean Resources Management Act, and the Ocean Management Guidelines do not authorize local shoreline permitting in federal waters and do not authorize local policies for federal waters or federal agencies.

The planning function of a SMP may look beyond the territorial limits of shorelines of the state to adjacent lands (see also [SMP Handbook Chapter 2: Shoreline Management Overview](#), [Chapter 5: Shoreline Jurisdiction](#) and [Chapter 7 Inventory and Characterization](#)). For example, the shoreline inventory and characterization for an SMP should include consideration of ecosystem-wide processes and functions that pertain to shorelines, but which are often outside of shoreline jurisdiction.

2. What is Washington's coastal zone?

Under its CZMP, Washington's coastal zone covers the full extent of 15 coastal counties, including offshore to 3 n.m. and all inland areas of the county. Washington's coastal zone counties are: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom and Wahkiakum.

The coastal zone has diverse regions: the Pacific Ocean coastal area including its estuaries and uplands; the Puget Sound basin including the upland areas to the crest of the Cascade Mountain range; and the lower Columbia River and its uplands.

3. What is "federal consistency"?

Under the federal Coastal Zone Management Act of 1972 (CZMA), Section 307 is the "federal consistency" provision that gives a coastal state a strong voice, that it would not otherwise have, in federal agency decision-making for activities that may affect the coastal uses or resources of a state's coastal zone. Generally, federal consistency requires that federal actions (which includes federally-permitted actions and federal government projects), within and outside the coastal zone, which have reasonably foreseeable effects on any coastal use (land or water) or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal zone management program (CZMP).

Washington Department of Ecology (Ecology) administers the state's CZMP and is responsible for implementing the state's coastal management program and conducting federal consistency reviews. The specific type of federal action will determine whether a consistency determination or certification is required and what procedures must be followed to demonstrate consistency with the enforceable policies of Washington's CZMP. Ecology then reviews the federal action for consistency and either

concur with, concurs with conditions, or objects. See NOAA's regulations at 15 C.F.R. Part 930 and [NOAA's Federal Consistency Overview](#) document for additional information about federal consistency and enforceable policies.

4. How do Shoreline Master Programs apply to federal consistency decisions for federal actions in state waters?

The SMA contains enforceable policies that have been incorporated into Washington's CZMP. When a federal action occurs in state waters, the federal consistency review must evaluate how that action is consistent with the enforceable policies in the SMA and its regulations.

The state's federal consistency review can be informed and guided by policies and standards within local SMPs that the state has approved and adopted. The review can include consultation with the local government with jurisdiction where the federal action is occurring. While the state may consider local SMPs, any federal consistency objection by the state must be based on the enforceable policies in the SMA and regulations.

5. What are "coastal effects" under the CZMA federal consistency provision?

At the heart of federal consistency is the "effects test." A federal action is subject to CZMA federal consistency requirements if the action will affect a coastal use or resource. (See 15 C.F.R. § 930.11(g)). NOAA's regulations define "coastal effects" as:

"Any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions."

The effects test can apply to activities, uses, or resources that occur outside a state's coastal zone, as long as the uses or resources impacted are, in fact, uses or resources of a state's coastal zone. The burden for determining or demonstrating effects is greater the farther an activity is from a state's coastal zone. The test is whether impacts that occur outside of the coastal zone will result in reasonably foreseeable effects to uses and resources of the coastal zone. Merely showing impacts from an activity outside of the coastal zone is not sufficient to demonstrate that reasonably foreseeable effects extend to uses or resources of the state's coastal zone.

6. Do state or local authorities apply in federal waters?

No. For counties on Washington's Pacific Coast, the territorial and regulatory limit of a Shoreline Master Program is the same as the extent of Washington's state waters -- three n.m. offshore. The federal government maintains jurisdiction from 3 to 200 n.m. offshore.

As part of its CZMP, Washington may, study federal waters and identify uses, resources, and areas of federal waters that are of interest to the state. However, it may not establish regulatory standards or enforceable policies for federal agencies, lands, or waters.

A state coastal program can seek authority to review a project occurring in federal waters to evaluate whether that project may have effects on the state's coastal uses or resources. (see questions #5, #7 and #8)

7. What's the process for Washington to use federal consistency to review a federal license or federal permit in federal waters?

Under Washington's CZMP, Ecology can seek authority to review a federal permit or license activity in federal waters in one of two ways: 1) request approval from NOAA to review a federal permit or license in federal waters on a case-by-case basis or 2) amend its CZMP to describe specific geographic areas in federal waters (called a geographic location description or GLD) where specified federal license or permit activities would be automatically subject to state review. (See 15 C.F.R. §§ 930.53 and 930.54).

8. How can Washington review federal activities outside of state waters?

Under certain circumstances and through the federal consistency processes described above, Ecology can review federal actions in federal waters. Again, this review requires Ecology to describe reasonably foreseeable effects from the federal action to coastal uses or resources in Washington's coastal zone (see Questions 3 and 5). The federal action would then be evaluated for consistency with each of Washington's approved enforceable policies, including the Shoreline Management Act (SMA).

Ecology's federal consistency concurrence or objection must be based on enforceable policies contained in the state's NOAA-approved coastal management program. The CZMA does not give Washington jurisdiction in federal waters, and Washington's coastal management program cannot include enforceable or regulatory policies for federal waters or lands. This means that enforceable policies in Washington's coastal management program and Washington's ocean management plans, such as the marine spatial plan, can only be written to apply to state waters or areas of state jurisdiction.

9. Is there any opportunity for public participation in the Coastal Zone Management Act federal consistency process?

Yes. Public participation in Ecology's federal consistency reviews is an important element of the state's CZMP. Ecology's public involvement process includes distribution of a public notice with a 21-day comment period to interested parties. Ecology has the option of holding a public meeting or hearing for projects needing federal approval or projects conducted by a federal agency.

10. What is Marine Spatial Planning (MSP)?

Under a state law (RCW 43.372), Washington State is developing a Marine Spatial Plan (MSP) for Washington's Pacific Coast. The purpose of the MSP is to ensure that future developments related to marine activities and uses are appropriately sited, so existing activities and new development can successfully coexist, while maintaining a productive, healthy marine ecosystem. The MSP study area includes both state and federal waters along Washington's entire Pacific Coastline and is focused on

addressing a suite of potential new ocean uses. However, any policies or project siting recommendations will only apply to state waters as the state has no jurisdiction in federal waters.

The result of this non-regulatory plan will be an improved information resource to support decision-making; a coordinated interagency framework for applying existing policies; and recommendations to guide future uses of the ocean. This will increase the efficiency of decision-making, improve predictability for existing and future ocean users, and create a better baseline of information for monitoring and evaluating impacts to ocean resources and uses.

11. How will the MSP affect federal consistency decisions?

As part of its CZMP, Washington State may study federal waters and identify uses, resources and areas of federal waters that are of interest to the state. However, it may not establish enforceable policies or regulatory standards for federal agencies, federal waters or federal lands.

A state may incorporate an ocean management plan, like Washington's MSP, into its coastal management program under the CZMA, subject to NOAA approval. Any policies within the MSP that Washington wishes to apply for federal consistency reviews must first be approved by NOAA for incorporation into the state's coastal management program. In addition, Washington would have to establish a Geographic Location Description, approved by NOAA, before the MSP enforceable policies could be applied to federal actions in federal waters *through the CZMA federal consistency provision*. (See 15 C.F.R. Part 923, Subpart H; and 15 C.F.R. § 930.53).

Washington's MSP will include studies of federal waters, including a substantial amount of environmental, ecological, and human use information. This information will be useful for environmental reviews and other planning and regulatory decisions. Ecology will be able to use the MSP data and maps to assess coastal effects from a proposed project in federal waters, which will be helpful for conducting federal consistency reviews.

For example, the Ocean Resources Management Act, another source of enforceable policies incorporated into Washington's CZMP, requires state approvals for ocean uses to meet a number of broad policies. These policies include avoiding and minimizing significant adverse impacts to the environment, economy, and society. The MSP may assist by identifying and analyzing these important resources and uses upfront. This, in turn, provides the information needed for Ecology to evaluate whether a federal action may have reasonably foreseeable effects on the state's coastal uses or resources.

12. What is the relationship between MSP and Shoreline Master Programs?

The MSP and SMPs for Washington's Pacific Coast share many common traits and are compatible planning processes that can be mutually beneficial. The MSP can provide information and analysis on ocean resources and uses and policy recommendations for local shoreline comprehensive updates or future local program amendments. SMPs can be a source of information for the MSP and provide a detailed implementation mechanism for the MSP in state waters.

The data and information products from the MSP's initial stages can contribute to the ocean component of a local coastal shoreline inventory, analysis, and characterization. Once the draft marine spatial plan is completed, the resulting informational maps, recommended environment designations, and policies can

be assessed and further refined by a local jurisdiction for the SMP’s environment designations, policies and regulations, and for use in the cumulative impacts analysis.

Further, local SMPs on Washington’s Pacific Coast are required to address the Ocean Management Guidelines. The Ocean Management Guidelines are state regulations that provide specific guidance on how to address ocean uses within a local SMP. Since the MSP law requires the integration and use of existing authorities, the Ocean Management Guidelines’ policies will also be incorporated into the information, analysis, and recommendations in the final MSP.

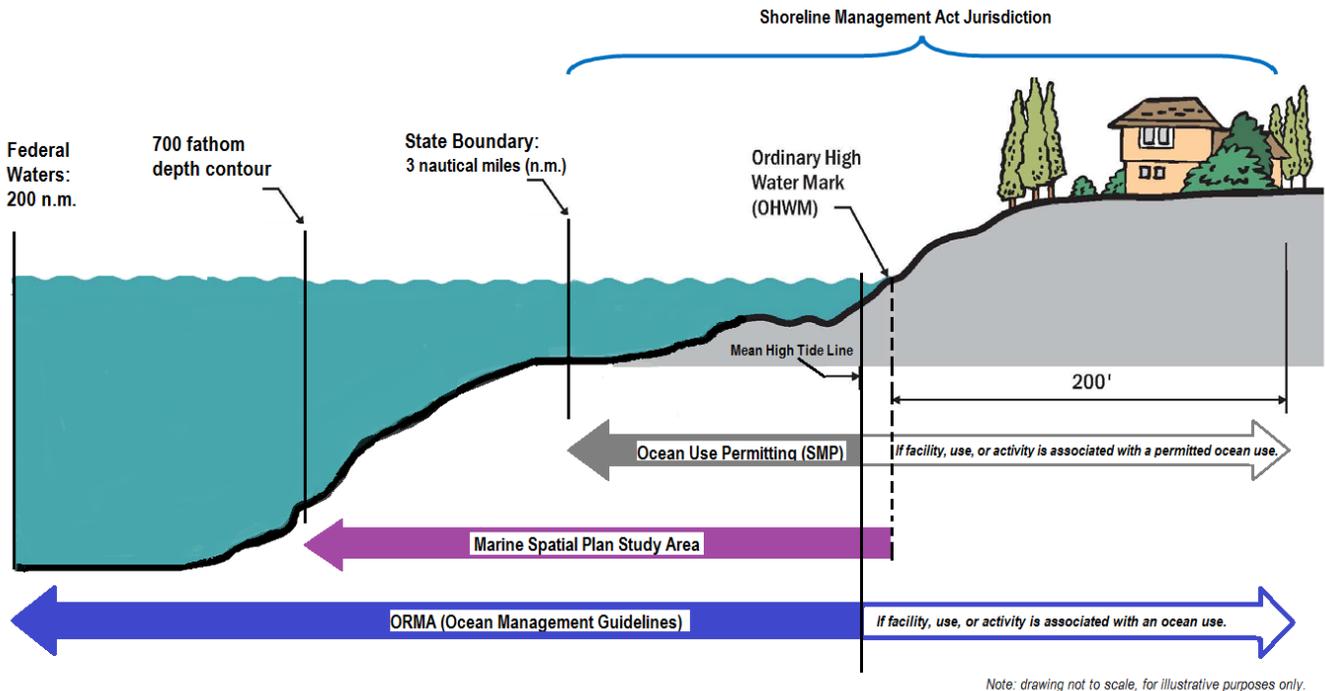


Figure 1: The geographic coverage of the Shoreline Management Act, Ocean Resources Management Act and Ocean Management Guidelines, and Marine Spatial Plan varies based on their associated laws and regulations. Local governments may regulate ocean use activities that meet the guidelines and shoreline master program from mean high tide out to 3 nautical miles.

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