

Routine Program Change Submittal of the Marine Spatial Plan Analysis Document

Introduction

Washington's Coastal Zone Management Program, as administered by the Department of Ecology, is submitting the 2018 *Marine Spatial Plan for Washington's Pacific Coast* to the National Oceanic and Atmospheric Administration (NOAA) for review and approval in order for its incorporation into the State's federally-approved coastal zone management program. The Plan contains enforceable policies relating to Important, Sensitive, Unique Areas (ISUs) and Fisheries Protection measures as well as new Necessary Data and Information pursuant to 15 CFR Part 930.58(2). Appendix E of the Marine Spatial Plan provides context on the intersections between the Plan and federal consistency under the Coastal Zone Management Act. Appendix E also summarizes the enforceable policies and Necessary Data and Information contained within the Plan.

Washington will benefit from the Marine Spatial Plan's incorporation into Washington's Coastal Zone Management Program (WCZMP). Although not intended to be an assertion of state regulatory authority beyond state waters, the incorporation will enhance the State's review of federal actions that have reasonably foreseeable effects on Washington's coastal resources and uses through the federal consistency process (more details are provided in Chapter 4: MSP Management Framework, Section 4.2 and Appendix E). In addition, having a Washington State plan for the Pacific coast will enhance partnerships with the other states, the federal government, and tribes in West Coast regional marine spatial planning coordination.

Background

In March 2010, the Washington State Legislature enacted the Marine Waters Planning and Management Act (aka the marine planning law) to foster integrated coastal decision making and ecosystem-based management (RCW 43.372) through "Marine Spatial Planning" - a comprehensive, place-based and ecosystem-based planning tool. In July 2012, the State Legislature began funding the creation of a plan for Washington's Pacific coast. Governor Gregoire designated the Department of Ecology as the overall lead for coordinating the planning process.

The State developed the Marine Spatial Plan (MSP) with the support of sister agencies and key stakeholders, the public, and local, federal, and tribal governments. The State Ocean Caucus (SOC) - an interagency team representing Ecology, Washington Department of Natural Resources, Washington Department of Fish and Wildlife, the Governor's office, the Washington State Parks and Recreation Commission, and Washington Sea Grant - led the planning process. The Washington Coastal Marine Advisory Council (WCMAC) - a Governor-appointed advisory group inclusive of stakeholders and government, participated throughout.

In the spring of 2013, Washington Sea Grant and state agencies convened a series of marine spatial planning scoping workshops in Aberdeen, Washington. Over 50 people attended each of the workshops, representing local government, state and federal agencies, tribes, and the WCMAC. Participants developed draft goals, objectives, and a planning boundary for the MSP for Washington's Pacific Coast.

Relying on the draft language, Ecology issued a scoping notice and comment period for the plan under the State Environmental Policy Act (SEPA). The public comment period ran from July, 2013 through September, 2013, and Ecology received and considered 17 unique comment letters and 28 signed form letters. Ecology used these comments to revise the scope of the proposed MSP and released the preliminary draft plan in 2017. After the Plan went through the environmental impact analysis as required by the State Environmental Policy Act, Ecology issued the final determination on June 20, 2018, and the Plan became effective one week later, on June 27, 2018.

The MSP for Washington's Pacific Coast provides a baseline of scientific information, a consistent way of evaluating future proposals, and a framework to coordinate decisions around human uses of the sea. The plan also creates a process for coordinating across all levels of government and ensuring stakeholder input on new ocean uses.

This process will improve marine resource management by planning for new ocean uses and reducing conflict, and it will increase certainty for those using or seeking to use Washington's coastal waters. It will also help reduce impacts on the marine environment, thus maximizing the social, economic and ecological benefits we receive from ocean resources.

Specifically, the MSP provides the following:

- Guidance for ocean uses along Washington's Pacific coast, including renewable energy projects, offshore aquaculture, dredged material disposal in new locations, marine product extraction, sand and gravel or gas hydrate mining, and other development uses.
- Baseline data on coastal uses and resources to capture current conditions and future trends.
- Requirements and recommendations for evaluating ocean uses through the different phases of project review, consistent with existing laws and regulations – particularly those contained in the Ocean Resources Management Act and its regulations. Identifies the various state and local authorizations that a project may be required to obtain, such as city or county shoreline permits (under their Shoreline Master Programs) and aquatic land use authorizations from the Department of Natural Resources.
- Recommendations to protect the environment and existing uses. This includes new enforceable policies to protect specific environmentally-sensitive areas and fisheries.
- A framework and analyses for increased coordination and guidance for decision-making activities that enable plan monitoring, evaluation, and adaptation.

Program Change Analysis

Enforceable Policies

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 Act serves as the Enforceable Mechanism for the proposed, new enforceable policies contained in the MSP, which are:

- Important, Sensitive and Unique areas (ISUs) and associated protection standards (MSP at 4.3.3)
- Fisheries protection standards (MSP at 4.6.3)

ISUs

State law requires the MSP to identify environmentally sensitive and unique resources that warrant protective measures (RCW 43.372.040(6) (c)). Therefore, Section 4.3.3 of the Plan designates Important, Sensitive and Unique Areas (ISUs) in state waters that have high conservation and/or historic value, or key infrastructure. The ISUs include standards to maintain the high values of these areas and protect the ISUs from adverse effects of offshore development, while allowing existing compatible uses such as fishing. Designation of an ISU, like the MSP itself, neither alters nor affects tribal treaty rights.

As part of the MSP, the state is also developing maps of known ISUs based on available information and data. However, it is important to note (as stated in the Plan itself) that the designation of ISUs and the application of the enforceable protective standards is habitat- and resource-based, wherever 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, ISU maps are intended to assist the state, local governments and applicants by showing known locations of ISUs.

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 MSP sets forth a requirement for consulting with WDFW 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).

Necessary Data and Information

For federal permit, license or lease applicants, NOAA's regulations (15 CFR Part 930) allow a state to identify additional necessary data and information (ND&I) a state believes is needed to start the CZMA six-month review period (15 CFR Part 930.58).

The MSP Management Framework at 4.2.1.5 identifies and describes the ND & I Ecology needs to start the CZMA six-month review period for federal license or permit activities under 15 CFR Part 930, Subpart D, and OCS Plans under 15 C.F.R part 930, subpart E, pursuant to 15 C.F.R. 930.58. Specifically the two additional ND&I contained in the MSP includes:

1. A copy of the notice provided to the Washington Coastal Management Advisory Committee (WCMAC) chair and membership (see Section 4.2.1.3(a)(ii))

Applicants should involve stakeholders and the public in all aspects of project development and review by working collaboratively with stakeholders, including but not limited to stakeholders representing fishing, aquaculture, maritime commerce, conservation, tourism, and recreation interests, and the Washington Coastal Marine Advisory Council (WCMAC).

WCMAC is a forum that can facilitate information sharing about proposed projects and the status of decision-making processes among agencies and stakeholders. Applicants must provide notice to WCMAC once a federal application has been submitted. This notice shall be necessary data and information required for federal consistency reviews for the purposes of starting the CZMA six-month review period for federal license or permit activities. Washington's CZMP needs a copy of the notice to ensure that the applicant has engaged with WCMAC.

2. A copy of the sign-in and summary from a meeting with WDFW and affected fisheries stakeholders (see Section 4.2.1.4(c))

Applicants must notify the Washington State Department of Fish and Wildlife's (WDFW) Intergovernmental Ocean Policy office regarding a potential project proposal, as early as possible, including likely location(s) of the project. The WDFW will then provide timely notice to affected stakeholders, which may include established fishing advisory groups and license holders, for potentially affected commercial and recreational fisheries.

Applicants will coordinate with WDFW and commercial and recreational fisheries on an effective process and schedule to identify and discuss potential adverse impacts on commercial and recreational fisheries and opportunities to avoid, reduce, or minimize impacts, which may require multiple meetings. Washington's CZMP needs a copy of the sign-in and summary to ensure that the applicant has properly engaged with WDFW and fisheries groups.

In conclusion, in reviewing a federal license or permit activity or an outer continental shelf (OCS) plan, the Washington CZMP will review the consistency certification together with the required ND&I to ensure the project is consistent with the approved enforceable policies of the WCZMP.

Enforceable Mechanisms

Washington'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 (MSPs). This state law creates the authority and directive for the state to create and use the plan via existing processes. The law directs state agencies to use the MSP for Washington's Pacific Coast to develop policies that can guide the review of and decisions about ocean uses.

The MSP builds off of existing state authorities and the new enforceable policies constitute further detailing of existing state management programs and authorities, primarily found in the Shoreline Management Act (SMA) and the Oceans Resource Management Act (ORMA). The Plan provides data, information, analyses, and recommendations to address potential new ocean uses.

The law requires state and local agencies to make decisions consistent with the final MSP. This law and existing agency authorities and permitting programs, under the SMA and ORMA, serve as the Enforceable Mechanisms that allow the policies of the MSP to be carried out in the state. See Table E-1 in Appendix E which identifies the Enforceable Mechanisms for the new enforceable policies in the Plan.

Five Program Areas Analysis

The MSP and its enforceable policies do not substantially change any of the five program areas required by the CZMA for coastal management approval under 15 CFR 923:

Uses Subject to Management: The MSP is aimed at enhancing decision-making and management relating to ocean uses. The Plan neither eliminates nor adds uses that the WCZMP currently manages. Ocean uses already are managed subject to the Ocean Resources Management Act and WAC 173-26 Ocean Use Guidelines; both of which include enforceable policies.

Special Management Areas: See Chapter 2, section D of the WCZMP Program Document. The MSP does not affect or alter any of the Special Management Areas identified in the WCZMP.

Boundaries: Chapter 2, Section A of the WCZMP Program Document provides a legal description and a map of Washington's Coastal Zone boundaries. This change does not affect or alter the Coastal Zone boundary of Washington State.

Authorities and Organization: This change does not alter any existing authorities or the organization of the WCZMP. The Shorelands and Environmental Assistance Program continues to serve as Ecology’s administrator of the WCZMP. Specifically, The Marine Waters Planning and Management law at Chapter 43.372.005(2) states that:

“The purpose of this chapter is to build upon existing statewide Puget Sound, coastal (including shoreline management plans) and Columbia river (sic) efforts. When resources become available, the state intends to augment the marine spatial component of existing plans and to improve coordination among state agencies in the development and implementation of marine management plans.”

The MSP will be included in the WCZMP as another authority that forms the foundation of the Program.

Coordination, Public Involvement, and National Interest: There are no significant changes to any of these Coastal Program aspects. The MSP is aimed at enhancing review and analysis of future ocean uses, and it does not impact any of these Coastal Program components. Washington’s current Coastal Zone Management Program contains the essential pieces that allow the State to coordinate coastal issues among relevant parties and to involve the public in Program updates and decisions. The MSP provides greater coordination opportunities and secures stakeholder input at various levels of the ocean development/project stages.

The MSP provides a tool to protect ocean resources and uses, to guide potential applicants as they develop proposals for new ocean uses, and to assist state agencies and others, including local, tribal, and federal governments, in evaluating and engaging in those proposals more effectively. It provides information and guidance intended for use throughout the development of new ocean use proposals along Washington’s Pacific Coast. It assists agencies, tribal governments, and others in evaluating and engaging in proposals for new ocean uses and guides potential applicants as they develop those proposals.

Additionally, the WCZMP adequately addresses the national interest, and the MSP simply provides further details on how to adequately assess and evaluate future projects falling within the realm of supporting the national interest.

In conclusion, these enhancements to the WCZMP do not substantially alter any of the key program areas noted above. Again, they further detail, augment, and enrich the existing provisions of the approved Coastal Program.