

WAC 173-26-360 Ocean management. (1) Purpose and intent. This section implements the Ocean Resources Management Act, (RCW 43.143.005 through 43.143.030) enacted in 1989 by the Washington state legislature. The law requires the department of ecology to develop guidelines and policies for the management of ocean uses and to serve as the basis for evaluation and modification of local shoreline management master programs of coastal local governments in Jefferson, Clallam, Grays Harbor, and Pacific counties. The guidelines are intended to clarify state shoreline management policy regarding use of coastal resources, address evolving interest in ocean development and prepare state and local agencies for new ocean developments and activities.

(2) Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment directly south to the state border, including the mouth of the Columbia River, and from Cape Disappointment north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW 43.143.020) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW 90.58.340. The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca, the Columbia River east of Cape Disappointment, or other inland marine waters.

(3) Ocean uses defined. Ocean uses are activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

(4) Relationship to existing management programs. These guidelines augment existing requirements of the Shoreline Management Act, chapter 90.58 RCW, and those chapters in Title 173 of the Washington Administrative Code that implement the act. They are not intended to modify current resource allocation procedures or regulations administered by other agencies, such as the Washington department of fisheries management of commercial, recreational, and tribal fisheries. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources. Every effort will be made to take into account tribal interests and programs in the guidelines and master program amendment processes. After inclusion in the state coastal zone management program, these guidelines and resultant master programs will be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters. Participation in the development of these guidelines and subsequent amendments to master programs will not preclude state and local government from opposing the introduction of new uses, such as oil and gas development.

These and other statutes, documents, and regulations referred to or cited in these rules may be reviewed at the department of ecology, headquarters in Lacey, Washington, for which the mailing address is P.O. Box 47600, Olympia, WA 98504. The physical address is 300 Desmond Drive S.E., Lacey, WA 98503.

(5) Regional approach. The guidelines are intended to foster a regional perspective and consistent approach for the management of ocean uses. While local governments may have need to vary their programs to accommodate local circumstances, local government should attempt and the department will review local programs for compliance with these guidelines and chapter 173-26 WAC: Shoreline Management Act guidelines for development of master programs. It is recognized that further amendments to the master programs may be required to address new information on critical and sensitive habitats and environmental impacts of ocean uses or to address future activities, such as oil development. In addition to the criteria in RCW 43.143.030, these guidelines apply to ocean uses until local master program amendments are adopted. The amended master program shall be the basis for review of an action that is either located exclusively in, or its environmental impacts confined to, one county. Where a proposal clearly involves more than one local jurisdiction, the guidelines shall be applied and remain in effect in addition to the provisions of the local master programs.

(6) Permit criteria: Local government and the department may permit ocean or coastal uses and activities as a substantial development, variance or conditional use only if the criteria of RCW 43.143.030(2) listed 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.

(7) General ocean uses guidelines. The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts.

(c) When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(d) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(e) Chapter 197-11 WAC (SEPA rules) provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered should be consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(f) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(g) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(h) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(i) Local governments should evaluate their master programs and select the environment(s) for coastal waters that best meets the intent of chapter 173-26 WAC, these guidelines and chapter 90.58 RCW.

(j) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(k) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(l) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established,

traditional, and recognized times they are used or when the resource could be adversely impacted.

(n) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(o) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(p) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

(q) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(r) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(s) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(t) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(u) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(v) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(w) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(x) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(y) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

(8) Oil and gas uses and activities. Oil and gas uses and activities involve the extraction of oil and gas resources from beneath the ocean.

As established by the legislature in RCW 43.143.010, 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.

(9) Ocean mining. Ocean mining includes such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

(a) Seafloor mining should be located and operated to avoid detrimental effects on ground fishing or other renewable resource uses.

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach erosion or accretion processes.

(c) Special attention should be given to habitat recovery rates in the review of permits for seafloor mining.

(10) Energy production. Energy production uses involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wave action or differences in water temperature to generate electricity.

(a) Energy-producing uses should be located, constructed, and operated in a manner that has no detrimental effects on beach accretion or erosion and wave processes.

(b) An assessment should be made of the effect of energy producing uses on upwelling, and other oceanographic and ecosystem processes.

(c) Associated energy distribution facilities and lines should be located in existing utility rights of way and corridors whenever feasible, rather than creating new corridors that would be detrimental to the aesthetic qualities of the shoreline area.

(11) Ocean disposal. Ocean disposal uses involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordnance, platforms, or other man-made structures.

(a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment.

(b) Ocean disposal shall be allowed only in sites that have been approved by the Washington department of ecology, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers as appropriate.

(c) Ocean disposal sites should be located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of habitats, but the general intent of the guidelines should still be met.

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activi-

ties that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

(13) Ocean research. Ocean research activities involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels, that also occur in exploration and ocean uses or developments, a case by case determination of the applicable regulations may be necessary.

(a) Ocean research should be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.

(b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of chapter 173-15 WAC: Permits for oil or natural gas exploration activities conducted from state marine waters.

(c) Ocean research should be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

(d) Ocean research should be completed or discontinued in a manner that restores the environment to its original condition to the maximum extent feasible, consistent with the purposes of the research.

(e) Public dissemination of ocean research findings should be encouraged.

(14) Ocean salvage. Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

(a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

(b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-360, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order

10-07), § 173-26-360, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 00-24-031 (Order 95-17a), recodified as § 173-26-360, filed 11/29/00, effective 12/30/00. Statutory Authority: RCW 90.58.195. WSR 91-10-033 (Order 91-08), § 173-16-064, filed 4/24/91, effective 5/25/91.]