

Chapter 43.372 RCW
MARINE WATERS PLANNING AND MANAGEMENT

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RCW 43.372.005 Findings—Purpose. (1) The legislature finds that:

(a) Native American tribes have depended on the state's marine waters and its resources for countless generations and continue to do so for cultural, spiritual, economic, and subsistence purposes.

(b) The state has long demonstrated a strong commitment to protecting the state's marine waters, which are abundant in natural resources, contain a treasure of biological diversity, and are a source of multiple uses by the public supporting the economies of nearby communities as well as the entire state. These multiple uses include, but are not limited to: Marine-based industries and activities such as cargo, fuel, and passenger transportation; commercial, recreational, and tribal fishing; shellfish aquaculture; telecommunications and energy infrastructure; seafood processing; tourism; scientific research; and many related goods and services. These multiple uses as well as new emerging uses, such as renewable ocean energy, constitute a management challenge for sustaining resources and coordinating state decision making in a proactive, comprehensive and ecosystem-based manner.

(c) Washington's marine waters are part of a west coast-wide large marine ecosystem known as the California current, and the Puget Sound and Columbia river estuaries constitute two of the three largest estuaries that are part of this large marine ecosystem. Puget Sound and the Columbia river are estuaries of national significance under the national estuary program, and the outer coast includes the Olympic national marine sanctuary.

(d) Washington is working in cooperation with the states of Oregon and California and federal agencies on ocean and ocean health management issues through the west coast governors' agreement on ocean health, and with the government of British Columbia on shared waters management issues through the British Columbia-Washington coastal and ocean task force.

(e) Washington has initiated comprehensive management programs to protect and promote compatible uses of these waters. These include: The development of a comprehensive ecosystem-based management plan known as the Puget Sound action agenda; shoreline plans for shorelines around the state; management plans for state-owned aquatic lands and their associated waters statewide; and watershed and salmon recovery

management plans in the upland areas of Puget Sound, the coast, and the Columbia river. Data and data management tools have also been developed to support these management and planning activities, such as the coastal atlas managed by the department of ecology and the shore zone database managed by the department of natural resources.

(f) For marine waters specifically, Washington has formed several mechanisms to improve coordination and management. A legislatively authorized task force formed by the governor identified priority recommendations for improving state management of ocean resources through Washington's ocean action plan in 2006. The governor further formed an ongoing interagency team that assists the department of ecology in implementing these recommendations. There is an extensive network of marine resources committees within Puget Sound and on the outer coast and the Columbia river to promote and support local involvement identifying and conducting local priority marine projects and some have been involved in local planning and management. Through the Olympic coast intergovernmental policy council, the state has also formalized its working relationship with coastal tribes and the federal government in the management of the Olympic coast national marine sanctuary.

(g) Reports by the United States commission on oceans policy, the Pew oceans commission, and the joint oceans commission initiative recommend the adoption of a national ocean policy under which states and coastal communities would have a principal role in developing and implementing ecosystem-based management of marine waters. Acting on these recommendations, the president of the United States recently formed an interagency ocean policy task force charged with developing a national ocean policy and a framework for marine spatial planning that involves all governmental levels, including state, tribal, and local governments. To further develop and implement such a planning framework, it is anticipated that federal cooperation and support will be available to coastal states that are engaged in marine and coastal resource management and planning, including marine spatial planning.

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

(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. Specifically, in conducting marine spatial planning, and in augmenting existing marine management plans with marine spatial planning components, the state must:

(a) Continue to recognize the rights of native American tribes regarding marine natural resources;

(b) Base all planning on best available science. This includes identifying gaps in existing information, recommend a strategy for acquiring science needed to strengthen marine spatial plans, and create a process to adjust plans once additional scientific information is available;

(c) Coordinate with all stakeholders, including marine resources committees and nongovernmental organizations, that are significantly involved in the collection of scientific information, ecosystem protection and restoration, or other activities related to marine spatial planning;

- (d) Recognize that marine ecosystems span tribal, state, and international boundaries and that planning has to be coordinated with all entities with jurisdiction or authority in order to be effective;
- (e) Establish or further promote an ecosystem-based management approach including linking marine spatial plans to adjacent nearshore and upland spatial or ecosystem-based plans;
- (f) Ensure that all marine spatial plans are linked to measurable environmental outcomes;
- (g) Establish a performance management system to monitor implementation of any new marine spatial plan;
- (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;
- (k) Integrate this planning with existing plans and ongoing planning in the same marine waters and provide additional mechanisms for improving coordination and aligning management;
- (l) Promote recovery of listed species under state and federal endangered species acts plans pursuant to those plans; and
- (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. [2010 c 145 § 1.]

RCW 43.372.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Aquatic lands" includes all tidelands, shorelands, harbor areas, and the beds of navigable waters, and must be construed to be coextensive with the term "aquatic lands" as defined in RCW 79.105.060.
- (2) "Exclusive economic zone waters" means marine waters from the offshore state boundary to the boundary of the exclusive economic zone, over which the United States government has primary jurisdiction.
- (3) "Marine counties" includes Clallam, Jefferson, Grays Harbor, Wahkiakum, San Juan, Whatcom, Skagit, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, and Pacific counties.
- (4) "Marine ecosystem" means the physical, biological, and chemical components and processes and their interactions in marine waters and aquatic lands, including humans.
- (5) "Marine interagency team" or "team" means the marine interagency team created under RCW 43.372.020.
- (6) "Marine management plan" and "marine waters management plan" means any plan guiding activities on and uses of the state's marine waters, and may include a marine spatial plan or element.
- (7) "Marine resources committees" means those committees organized under RCW 36.125.020 or by counties within the Northwest straits marine conservation initiative.
- (8) "Marine spatial planning" means a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social

objectives. Often this type of planning is done to reduce conflicts among uses, to reduce environmental impacts, to facilitate compatible uses, to align management decisions, and to meet other objectives determined by the planning process.

(9) "Marine waters" means aquatic lands and waters under tidal influence, including salt waters and estuaries to the ordinary high water mark lying within the boundaries of the state. This definition also includes the portion of the Columbia river bordering Pacific and Wahkiakum counties, Willapa Bay, Grays Harbor, the Strait of Juan de Fuca, and the entire Puget Sound. [2010 c 145 § 2.]

RCW 43.372.020 Marine interagency team. (1) The office of the governor shall chair a marine interagency team that is composed of representatives of each of the agencies in the governor's natural resources cabinet with management responsibilities for marine waters, including the independent agencies. A representative from a federal agency with lead responsibility for marine spatial planning must be invited to serve as a liaison to the team to help ensure consistency with federal actions and policy. The team must assist state agencies under RCW 43.372.030 with the review and coordination of such planning with their existing and ongoing planning and conduct the marine management planning authorized in RCW 43.372.040.

(2) The team may not commence any activities authorized under RCW 43.372.030 and 43.372.040 until federal, private, or other funding is secured specifically for these activities. [2012 c 252 § 1; 2010 c 145 § 3.]

RCW 43.372.030 Marine spatial data and marine spatial planning elements—Inclusion in planning—Joint plans and planning frameworks—Integration with comprehensive marine management plan. (1) Subject to available federal, private, or other funding for this purpose, all state agencies with marine waters planning and management responsibilities are authorized to include marine spatial data and marine spatial planning elements into their existing plans and ongoing planning.

(2) The director of the Puget Sound partnership under the direction of the leadership council created in RCW 90.71.220 must integrate marine spatial information and planning provisions into the action agenda. The information should be used to address gaps or improve the effectiveness of the spatial planning component of the action agenda, such as in addressing potential new uses such as renewable energy projects.

(3) The governor and the commissioner of public lands, working with appropriate marine management and planning agencies, should work cooperatively with the applicable west coast states, Canadian provinces, and with federal agencies, through existing cooperative entities such as the west coast governor's agreement on ocean health, the coastal and oceans task force, the Pacific coast collaborative, the Puget Sound federal caucus, and the United States and Canada cooperative agreement working group, to explore the benefits of developing joint marine spatial plans or planning frameworks in the shared waters of the Salish Sea, the Columbia river estuary, and in the exclusive economic zone waters. The governor and commissioner may approve the adoption of shared marine spatial plans or planning

frameworks where they determine it would further policies of this chapter and chapter 43.143 RCW.

(4) On an ongoing basis, the director of the department of ecology shall work with other state agencies with marine management responsibilities, tribal governments, marine resources committees, local and federal agencies, and marine waters stakeholders to compile marine spatial information and to incorporate this information into ongoing plans. This work may be integrated with the comprehensive marine management plan authorized under RCW 43.372.040 when that planning process is initiated.

(5) All actions taken to implement this section must be consistent with RCW 43.372.060. [2012 c 252 § 2; 2010 c 145 § 5.]

RCW 43.372.040 Comprehensive marine management plan. (1) Upon the receipt of federal, private, or other funding for this purpose, the marine interagency team shall coordinate the development of a comprehensive marine management plan for the state's marine waters. The marine management plan must include marine spatial planning, as well as recommendations to the appropriate federal agencies regarding the exclusive economic zone waters.

(2) The comprehensive marine management plan may be developed in geographic segments, and may incorporate or be developed as an element of existing marine plans, such as the Puget Sound action agenda. If the team exercises the option to develop the comprehensive marine management plan in geographic segments, it may proceed with development and adoption of marine management plans for these geographic segments on different schedules.

(3) The chair of the team may designate a state agency with marine management responsibilities to take the lead in developing and recommending to the team particular segments or elements of the comprehensive marine management plan.

(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.

(5) To ensure the effective stewardship of the state's marine waters held in trust for the benefit of the people, the marine management plan must rely upon existing data and resources, but also

identify data gaps and, as possible, procure missing data necessary for planning.

(6) The marine management plan must include but not be limited to:

(a) An ecosystem assessment that analyzes the health and status of Washington marine waters including key social, economic, and ecological characteristics and incorporates the best available scientific information, including relevant marine data. This assessment should seek to identify key threats to plan goals, analyze risk and management scenarios, and develop key ecosystem indicators. In addition, the plan should incorporate existing adaptive management strategies underway by local, state, or federal entities and provide an adaptive management element to incorporate new information and consider revisions to the plan based upon research, monitoring, and evaluation;

(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;

(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;

(d) An element that sets forth the state's recommendations to the federal government for use priorities and limitations, siting criteria, and protection of unique and sensitive biota and ocean floor features within the exclusive economic zone waters consistent with the policies and management criteria contained in this chapter and chapter 43.143 RCW;

(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.

(7) If the director of the department of fish and wildlife determines that a fisheries management element is appropriate for inclusion in the marine management plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.

(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.

(9) The marine management plan must recognize and value existing uses. All actions taken to implement this section must be consistent with RCW 43.372.060.

(10) The marine management plan must identify any provisions of existing management plans that are substantially inconsistent with the plan.

(11) (a) In developing the marine management plan, the team shall implement a strong public participation strategy that seeks input from throughout the state and particularly from communities adjacent to marine waters. Public review and comment must be sought and incorporated with regard to planning the scope of work as well as in regard to significant drafts of the plan and plan elements.

(b) The team must engage tribes and marine resources committees in its activities throughout the planning process. In particular, prior to finalizing the plan, the team must provide each tribe and marine resources committee with a draft of the plan and invite them to review and comment on the plan.

(12) The director of the department of ecology shall submit the completed marine management plan to the appropriate federal agency for its review and approval for incorporation into the state's federally approved coastal zone management program.

(13) Subsequent to the adoption of the marine management plan, the team may periodically review and adopt revisions to the plan to incorporate new information and to recognize and incorporate provisions in other marine management plans. The team must afford the public an opportunity to review and comment upon significant proposed revisions to the marine management plan. [2012 c 252 § 3; 2010 c 145 § 6.]

RCW 43.372.050 Marine management plans—Compliance—Consistency—Review—Report and recommendations. (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.

(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.

(4) All actions taken to implement this section must be consistent with RCW 43.372.060. [2010 c 145 § 7.]

RCW 43.372.060 Authority limited. 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. [2010 c 145 § 8.]

RCW 43.372.070 Marine resources stewardship trust account. (1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, and implementation of the marine management plan.

(3) Except as provided in subsection (5) of this section, until July 1, 2016, expenditures from the account may only be used for the purposes of:

(a) Conducting ecosystem assessment and mapping activities in marine waters consistent with RCW 43.372.040(6) (a) and (c), with a focus on assessment and mapping activities related to marine resource uses and developing potential economic opportunities;

(b) Developing a marine management plan for the state's coastal waters as that term is defined in RCW 43.143.020; and

(c) Coordination under the west coast governors' agreement on ocean health, entered into on September 18, 2006, and other regional planning efforts consistent with RCW 43.372.030.

(4) Expenditures from the account on projects and activities relating to the state's coastal waters, as defined in RCW 43.143.020, must be made, to the maximum extent possible, consistent with the recommendations of the Washington coastal marine advisory council as provided in RCW 43.143.060. If expenditures relating to coastal waters are made in a manner that differs substantially from the Washington coastal marine advisory council's recommendations, the responsible agency receiving the appropriation shall provide the council and appropriate committees of the legislature with a written explanation.

(5) During the 2019-2021 and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the marine resources stewardship trust account to the aquatic lands enhancement account. [2021 c 334 § 983; 2019 c 415 § 975; 2016 sp.s. c 36 § 938; 2013 c 318 § 3; 2012 c 252 § 4; 2011 c 250 § 2; 2010 c 145 § 10.]

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW 43.79.555.

Effective date—2019 c 415: See note following RCW 28B.20.476.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Findings—2011 c 250: "(1) The legislature finds that the states of Washington, Oregon, and California have a common interest in the management and protection of ocean and coastal resources. This common interest stems from the many ocean and coastal resources that cross jurisdictional boundaries including winds, currents, fish, and wildlife, as well as the multijurisdictional reach of many uses of marine waters. These shared resources provide enormous economic, environmental, and social benefits to the states, and are an integral part of maintaining the high quality of life enjoyed by residents of the west coast.

(2) The legislature finds that the shared nature of ocean and coastal resources make coordination between the states of Washington, Oregon, and California essential in order to achieve effective ocean and coastal resource management and support sustainable coastal communities.

(3) The legislature recognizes the west coast governors' agreement on ocean health, entered into on September 18, 2006, as an important step towards achieving more coordinated management of these ocean and coastal resources.

(4) Ocean and coastal resource planning processes and funding opportunities recently initiated by the federal government contemplate action at the regional level. Early action on the part of Washington, Oregon, and California to collaboratively define and implement such planning efforts and projects will increase the states' ability to determine the course of federal planning processes for the west coast and receive nonstate support for the planning efforts, resource preservation and restoration projects, and projects to support ocean health and sustainable coastal communities.

(5) Therefore, collaboration on ocean and coastal resource management between Washington, Oregon, and California should be continued and enhanced through the respective legislatures, as well as through the respective executive branches through the west coast governors' agreement on ocean health." [2011 c 250 § 1.]