

WASHINGTON DUNGENESS CRAB FISHERMEN'S ASSOCIATION

12/10/2017

Jennifer Hennessey

Department of Ecology

PO Box 47600

Olympia , WA 98504-7600

**RE: Public comments on the MSP Draft Plan, and MSP Draft EIS : submitted by Larry Thevik WCMAC
Commercial fishing representative.**

Jennifer;

My Name is Larry Thevik I am the vice-president of the Washington Dungeness Crab Association (WDCFA) headquartered in Westport. I have been a commercial fisher for 45 years and have fished for various species from California to Alaska. The majority of my fishing income comes from Dungeness crab fishing. The Coastal crab fishery is sustainable and is the most valuable single species on the coast. Updated catch information for the recent 2016-17 season indicates that over \$60,000,000 in ex-vessel landings value was delivered from the Washington Coastal crab fishery. This value reflects both state and tribal landings.

I have attached comments on the MSP Draft and the Draft MSP EIS. I will also attempt to send these comments via e-mail. The comments are organized by Chapter and Section. Enclosed are comments listed:

1. Comments on Executive summary MSP Plan as a separate document.
2. Comments on MSP Plan Chapter 1 as a separate document
3. Comments on Chapter 2 as a separate document
4. Comments on Chapter 3 as a separate document
5. Comments on Chapter 4 and Chapter 5 as a separate document
6. Comments on MSP DEIS as a separate document

As we discussed on the phone mailed comments will be postmarked today 12/12/2017

Thank You for all of the work you have devoted to this process and the production of these documents.

Respectfully ,

Larry Thevik, WDCFA

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WASHINGTON DUNGENESS CRAB FISHERMEN'S ASSOCIATION

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Page 1

Comments and recommended edits for Draft SMP Executive Summary submitted by Larry Thevik WCMAC Commercial fishing representative:

Under Marine Spatial Plan Study Area: Paragraphs 1 and 2 and 3 (xiii) are insufficient in describing the MSP study area and the subdivisions of differing authorities within it.

Recommended edits for Paragraph 1: The MSP study area consists of marine waters of the Pacific Ocean adjacent to Washington's coast line from the intertidal zone out to the continental slope. It extends from ordinary high water on the shoreward side out to a water depth of 700 fathoms (4,200 feet). The 700 fathom curve ranges from 35 to 55 nautical miles offshore with an average distance of approximately 40 nautical miles westward of the shoreline. Extending from Cape Flattery on the north of the Olympic Peninsula south to Cape Disappointment at the Mouth of the Columbia River, the MSP study Area includes two large estuaries : Grays Harbor and Willapa Bay, covers a distance of 136 nautical miles, including 480 nautical miles of coastal shoreline and spans 5,839 square nautical miles (7,732 statute miles) of marine waters.

Recommended edits for Paragraph 2 (xii):

The northern coastal portion of the Study Area contains mostly rocky coast with several rivers, rocky outcrops, and pocket beaches. The northern portion of the Study Area overlaps with the majority of the 3,956 square nautical miles, of the Usual and Accustomed Areas (U&A's) of four coastal treaty tribes, and the 2,408 square nautical miles of the Olympic Coast National Marine Sanctuary.

Recommended edits for Paragraph 3 (xii):

The southern coastal portion of the Study area has sandy beaches and includes Willapa Bay and Grays Harbor. The southern portion of the Study Area overlaps the lower half of the Quinault Tribal Usual and Accustomed Area, (U&A), which includes Grays Harbor. Several small cities.....

Recommended addition to Paragraph 4 (xiv):

Add additional bullet after second bullet to include information from recent Port of Grays Harbor economic study on contribution of fishing industry to Grays Harbor economy:

* Port of Grays Harbor 2013 Economic Impact Study: 2052 jobs created by commercial fishing activities from just Port of Westport activity. Commercial fishing activity in Grays Harbor County generated \$203,000,000 in business revenue and \$8,890,000 in State and local taxes. Note; partial explanation for inconsistency with Taylor study: Taylor study did not include self-employed fishermen. Most fishers are self employed. Taylor used employment statistics from Washington State employment information which understates the number of jobs in

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the commercial fishing industry. Part of Grays Harbor study was based on direct interviews and other data sources.

Under **How to use the Plan:**

Recommended edit Paragraph 1 (xvi):

Fourth bullet afterexisting ocean uses, including but not limited to alternative locations.....

Under **Outline of Plan Content:**

Recommended edit fourth and fifth bullet paragraph 1 (xvii):

Note: The referred language in bullets four and five comes from statutory language in ORMA, specifically RCW 43.143.030. The bullets refer to "state waters" whereas the statute reads "Washington's coastal waters". These two bullets should be changed to capture explicit statutory language. After recent Washington State Supreme Court ruling reaffirming the application of ORMA to "ocean uses" aligning MSP language with the ORMA statutory language, would be additionally appropriate for bullets four and five. This would also be more consistent with the mapping mandate (RCW 43.372.040) identifying those areas, (in fourth bullet), throughout the MSP Study Area.

Change bullet four (4) to read: Identifying ecologically-sensitive resources in Washington's coastal waters to protect from adverse effects of offshore developments.

Change bullet five (5) to read: Defining policies in Washington's coastal waters to protect fisheries from long term

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Comments and recommended edits for Draft SMP Section 1 Introduction submitted by Larry Thevik WCMAC
Commercial fishing representative: (For public review and comment purposes it would have been helpful if each line in the document was identified. I will do the best I can with the format provided.)

1.1 Purpose and Need for the Marine Spatial Plan:

Suggested edit: Page 1-1 Paragraph 4 third bullet: "Requirements and recommendations for evaluating new ocean uses through the different phases of project review, comply with applicable local, state, and federal laws and regulations."

Note; I am concerned with an interpretation of "existing" with the notion of laws" existing" at the time of this document and not those "existing" at the time of project review. I am also concerned with "existing laws and regulations" not being specific enough. Additionally, I am concerned that "consistent" is vulnerable to interpretation and challenge and "comply" less so.

1.3 Plan Goals and objectives:

Suggested edit: Page 5 under **Over Arching Goal, Objective 1:** Note: It is unclear what a "healthy" existing resource - based economic activity on the Washington coast is. The term "healthy" does not have a specific scientific or regulatory meaning relative to resource based activity as far as I know. If it does please clarify. A more appropriate and meaningful word within regulatory language would be "sustainable". Further the statutory language at 43.143.060 (b) states "The protection and preservation of **existing sustainable** uses for current and future generations, including economic stakeholders reliant on marine waters " (To survive future scrutiny this document should incorporate statutory language rather than interpretive language where ever possible and appropriate.)

Change **Objective 1** to read: "Protect and preserve existing sustainable natural resource-based economic activity on the Washington coast for current and future generations."

Suggested edit: Page 1-7 and 1-8 Bullets 1 and 3, Under **Goal 5 Objective 5:** Note; the Statutory language at 143.030 (e) and (f) does not refer to "significant adverse" impacts it instead refers to "adverse" impacts. Once again the authors of these documents should not insert language that is interpretive or insert language that is not a part of the statutory language or plain intent of the legislature.

Change Page 1-7 under **Objective 5**, first bullet: Strike the word "significant" after "potential" and before "adverse...".

Change Page 1-8 under **Objective 5**, third bullet: Strike the word "significant" after. ... "address" and before "adverse...".

1.5 MSP Study Area:

Note: It is vitally important that the MSP study area and the subdivision of authorities within it are adequately described both in the visual mapping and in the text of the MSP plan. The textual explanation Under 1.5 the MSP Study Area, page 1-12 is insufficient.

Recommended changes to **1.5 the MSP Study Area** pages 1-12-1-13:

a. Page 1-12: "The MSP study area consists of marine state and federal waters along the Pacific Ocean. The Study Area extends from ordinary high water on the shoreward side out to 700 fathoms (4,200 feet). The 700 fathom depth curve ranges from 35 to 55 nautical miles offshore with an average distance of approximately 40 nautical miles westward of the shoreline. Extending from Cape Flattery on the north of the Olympic Peninsula south to Cape Disappointment at the Mouth of the Columbia River, the MSP Study Area encompasses estuaries along the coast, including two large estuaries : Grays Harbor and Willapa Bay covers a distance of 136 nautical miles, including 480 nautical miles of coastal shoreline and spans 5,839 square nautical miles (7,732 statute miles) of marine waters. (End of Paragraph).

New paragraph continues as is written starting with: "The Study Area was chosen....."

b. Page 1-13: Strike first sentence in first paragraph,,,,,, and begin paragraph with: "The Study Area includes the intertidal, nearshore, continental shelf.....(continue as written until end of fifth sentence ending withStrait of Georgia (Canada). (End of paragraph).

c. Start new paragraph beginning with; "A Large portion (Two thirds) of the MSP Study Area overlaps with the 3,956 square miles nautical miles of the Usual and Accustomed Areas (U&A's) of four coastal treaty tribes. The Area also includes the 2,408 square nautical miles of the Olympic Coast National Marine Sanctuary, areas designated as US Naval Operations Areas and includes the Washington State Seashore....." (continue as written).

1.6 Pacific Coast Indian Tribes and Treaty Rights:

a. Suggested addition: Page 1-14 paragraph two, fifth sentence; after "usual and accustomed areas" insert (U&As)

b. Suggested edit: Page 1-14, fourth paragraph, third sentence:

Note; It is critically important to understand the fundamental dynamics of the MSP study area. Tribal treaty rights and fishing areas are significant contributors to those dynamics. To that end a better textual explanation and additional detail of the scale of Tribal treaty right areas within the MSP Study Area is necessary.

Suggested re-write: replace fourth sentence; The tribal U&A fishing grounds are described on the east by 96 nautical miles of Washington's outer coast, extend as much as 56 nautical miles seaward and cover 3,956

square nautical miles of the MSP Study Area including Grays Harbor and can be seen in Map2 (National Oceanic and Atmospheric Administration, 2016).

c. Suggested edit: Page 1-15 under **Fishing Treaty Rights Co-Management** paragraph two, second sentence; "The treaty tribes , the State of Washington, specifically the Washington Department of Fish and Wildlife (WDFW), and the United States government (NOAA Fisheries and USFWS), co-manage through the Pacific Fisheries Management Council (PFMC) process federal fisheries resources in Washington. For fisheries under State jurisdiction, such as shellfish, including pink shrimp, spot prawns , and Dungeness crab (although extending into federal waters), the Tribes co-manage with the State."

1.6 Quileute Tribe:

Suggested addition: page 1-17 second paragraph. Note; As in Makaw, description of U&A for Quileute should also quantify area of Quileute U&A. Based on recent rulings this should be relatively easy to calculate. I estimate it to be approximately 1,700 square nautical miles.

a. Add: Page 1-17 second paragraph add to end of sentence after "south to the Queets River , extends 40-56 nautical miles west and encompasses 1,700 square nautical miles." (authors can determine actual square miles 1,700 is my estimate). (note: SW corner of Quileute U&A is 56 nautical miles from shore at 125.44 West and extending west of the Queets River.)

b. Suggested edit: Page 1-17, last paragraph under **Quileute Tribe:** Note; It is my understanding that the several tribes are each developing and will provide their own SMPs. I am skeptical and concerned with the State's MSP document messaging for presumed tribal preferences or positions. Tribal preference is not a specific part of State's MSP mandate. The last paragraph in this section would be more appropriate in the Quileute MSP and not in the State's MSP.

c. Strike: last paragraph page 1-17 which is one sentence in **1.6 Quileute Tribe.**

1.6 Quinault Indian Nation:

Note; as in Makaw, description of Quinault U&A should also be quantified.

Add: Under **Quinault Indian Nation** Page 1-18 first paragraph after first sentence ending in "...Point Chehalis. The Quinault U&A includes Grays Harbor and encompasses 1,725 square nautical miles." (authors can determine actual square miles 1,725 is my estimate).

1.7 Olympic Marine Sanctuary:

a. Suggested edits: Page 1-18, second paragraph, after second sentence insert revised sentence; "The Sanctuary described on the east by 84 nautical miles of the outer coast encompasses a densely complex shoreline of 141 nautical miles including all bays, inlets, points and other shoreline features."

b. Suggested addition: Page 1-18, third paragraph, third sentence under **Olympic Marine Sanctuary;** Add "Naval Operations" after "...including shipping, Naval operations, tribal and non-tribal...."

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Comments and recommended edits for Draft MSP Section 2 Current Conditions and Future Trends: submitted by Larry Thevik WCMAC Commercial fishing representative: : (For public review and comment purposes it would have been helpful if each line in the document was identified. I will do the best I can with the format provided.)

2.1 Ecology of Washington's Coast: Oil Spills; Page 2-40, at end of paragraph one, add to last sentence; "...however at the present time no crude oil tanker traffic transits Grays Harbor or the Columbia River."

2.1 Marine Debris: Page 2-42 third paragraph, second sentence insert the word "pot" or "trap" between "All fixed pot (or trap) gear fisheries.....".

Note third sentence same paragraph. There are not many "Other types of derelict gear that continue to catch.....". Perhaps authors could clarify what gear they are referring to? In Ocean waters there are no gillnets used for any fishery in the MSP Study Area. There could be some lost or abandoned trawl nets...probably not many.

2.1 Shoreline Development: Page 2-44, Second paragraph after first sentence insert new sentence; A recent Washington State Supreme Court ruling (cite) on the application of the Ocean Resources Management Act, (ORMA) (RCW 43.143.010), has also tied the issuance of Shoreline Development Permits to the requirements of ORMA in cases where the shore side activity would be directly connected to, are a part of or impact ocean uses and coastal resources.

2.3 Socioeconomic Setting:

a. Page 2-64, first paragraph, last sentence; change"as much as 40 nautical miles west into the Pacific." to read; ".....56 nautical miles west into the Pacific. (Note; SW corner of Quileute U&A extends to 125.44 W off of the Queets River a distance of 56 nautical miles-- authors can confirm).

b. Page 2-64 third paragraph; insert new bullet: Industrial Economic Inc. (2014) Marine sector analysis report....." .See page 2-80 for reference) (Note; This study also included "Stakeholder views and future trends. It was not just specific to an economic marine sector analysis. Results of this study would be appropriate to reference in section **2.3 Socioeconomic Setting** and should be included).

2.4 State and Tribal Fisheries:

a. **Note on Sources and Terminology,** Page 2-80 first paragraph before bullets: add a footnote to last sentence referencing additional economic studies. Studies are presently listed in Chapter 5, page 5-3. with all necessary

cites. All studies referenced in **Chapter 5** (page5-3) should be included as footnotes in **2.4 State and Tribal Fisheries** with the exception of the study by Surfrider Foundation study (2015) specific to coastal recreation

activities. Additional studies to be footnoted: BST Associates, (2014), Martin Associates (2014), Butler (2013), Radke (2011) Resource Dimensions (2015), National Marine Fisheries Service (2013).

b. Page 2-80, last paragraph Note; as a commercial fisher and coastal community member for over 47 years I do not feel present paragraph reflects the reality of the interaction and relationship between "commercial" and treaty fisheries.

Revise paragraph to read: "In addition, the term "commercial" in this section should not be read to include treaty tribal fisheries. While many tribal fisheries are comparable to non-tribal commercial fisheries in the areas they fish, the fishing methods they use, and also share markets into which fish are sold, and utilize many of the same on-shore support facilities, tribal fisheries are described separately because they are conducted under special authorities held by tribal governments. On a similar note tribal members also harvest fish and shellfish non-commercially, for ceremonial and subsistence purposes, yet they would not refer to their fishing as "recreational". Although "commercial" does not refer to tribal fisheries and the value of tribal commercial catches are not included in "commercial" fisheries value, tribal fishing contributes significantly to the overall value of the coastal fishing economy. The specific fishing activity of the four coastal treaty tribes are described in more detail below.

2.4 Summary of History and Current Use: Page 2-82, second paragraph end of first sentence, footnote (4) Note; tribal fishers **are not** restricted only to U&A areas in the MSP area for all fisheries. There exists no restriction on where tribal fishers can fish for Albacore. Similarly there exists no restriction on a tribal fishers ability to apply for a license under State authority for state fisheries in Alaska and elsewhere. Restriction on tribal fisheries is only on fisheries in the U&A areas conducted under co-management with the State of Washington. **Footnote (4) page 2-82 serves no real purpose, is inaccurate, and should be struck.**

2.4 Fisheries Management:

Note; the following two edits (a.) and (b.) are for purpose of MSP readers to better understand the dynamics and complications of fisheries management within the MSP Study Area.

a. Page 2-82 paragraph 2 after second sentence insert: The majority of the fish resource and corresponding value within the MSP Study Area is captured in Federal waters.

b. Page 2-82 paragraph 2 after third sentence insert: Tribal treaty fishing areas (U&As) cover two/ thirds of the MSP Study Area. (or extend as much as 56 nautical miles west and cover 3,956 nautical miles of the MSP Study area.)

c. Page 2-83, paragraph 3, third sentence; after 'forum" insert "....forum to discuss coordination.....".

d. Page 2-83 paragraph 3, last sentence; after Tri-State strike "Agreement" and insert "Committee".

2.4 About fisheries Maps and Data:

Note The methodology used to support maps in the MSP is a departure from the specific mapping mandate from the legislature. Legislative direction to the agencies used the term "value" to identify and quantify conflicts whereas the agencies use analysis did not. The legislative directive as contained in RCW 43.372.040(6)(c) did not contain language that prescribed maps that identified areas of existing use intensity but required mapping to identify areas of "high value" for existing use (such as fishing) and areas of "minimal conflict" with existing use (such as fishing) and potential new ocean uses. Intensity of use and number of uses is being used as a proxy for value. While this may have some merit it deserves further explanation. And the claim by the authors that the mapping exercise in the MSP plan meets the requirements of the referenced statute in first paragraph page 2-85 is a stretch. Once again authors have taken the liberty of substituting language different than statutory language. The full text of 43.372.040(6)(c) requires: ...plan must include but not be limited to: (6)(c) A SERIES OF MAPS THAT AT A MINIMUM, SUMMARIZE available data on: The key ecological aspects of the marine ecosystem, including physical 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 RENEWAL ENERGY PRODUCTION WITH MINIMAL POTENTIAL FOR CONFLICTS WITH OTHER EXISTING USES OR SENSITIVE ENVIRONMENTS; (emphasis added)

Suggested modifications:

a. Paragraph one page 2-85, first paragraph; request the authors offer a better explanation of the use of intensity and number of uses as a proxy for value and explain that the use analysis is an attempt to meet the requirements of RCW 43.372.040(6)(c) and not claim that it does meet requirements. Need to include qualifiers to the present claim of satisfying the requirements of the statute.

b. Note: Page 2-86 , Paragraph one and two; **Keep as written.** A clarification of what the use analysis and resulting maps did and did not utilize to identify and evaluate potential conflicts is important to the interpretation of results. These two paragraphs are helpful in clarifying the limitations of applying present use map methodology. But, they do not address the element of why this methodology was utilized and how it departs from the statutory mandate which should be better addressed in the first paragraph page 2-86. (see above)

2.4 Commercial Fisheries:

a. Page 2-86, paragraph two, third sentence, after ".....(typically in weight but often also in numbers of fish, (insert) management t zones where caught and the price.....",

b. Page 2-86, paragraph two, after last sentence add new sentence that reads; The "core" fish ticket information and landing value is just the first of many transactions within the commercial fishing economy and does not reflect the overall impact of commercial landings for values added form support industries and economic multipliers of "catch to plate".

c. Note: In order to facilitate a better understanding of the dynamics of the fisheries occurring in the MSP Study Area each fishery discussion should include a reference to waters where they occur, (State, Federal or Both). It is important for readers to understand the significance of federal waters to the coastal fishing economy and the need for consistency in both areas of jurisdiction within the MSP and the Study Area.

Suggested addition to fisheries description section: Include a reference to whether fishery occurs in State, Federal or both Jurisdictions. Groundfish-both, Fixed gear (sablefish)-federal, bottom trawl and midwater-federal, whiting-federal, salmon-both, ocean troll -both, gillnet-state, Albacore federal and international, Coastal pelagic-both, Pacific sardine-both, Dungeness crab-both pink shrimp-federal, spot prawns-federal, razor clams-state, pacific halibut-federal, hagfish federal.

d. Dungeness Crab:

1. Page 2-94, first paragraph, after first sentence, add new sentence; Through specific Congressional authority the several states of the Pacific coast have jurisdiction over the management of Dungeness crab in both state and federal waters in those waters adjacent to each state.

2. Page 2-94, second paragraph, rewrite paragraph to read; Co-management of the crab fishery began much later than that of the salmon fishery. Prior to 1994 tribal participation in the crab fishery was very limited accounting for only 1% of coastal 1990-1994 landings. After the 1994 Rafeedie Decision established that the Stevens Treaties and 50-50 sharing applied to shellfish as well as other species the tribal crab fishery ramped up. (this language was included in early drafts and was dropped for unknown reasons it is simply declarative and should be included.) Since 2004 tribal catches have averaged 20% of all coastal catches and have accounted for as much as 61% of the crab catch north of Point Chehalis (Westport) where treaty sharing occurs. The main tools for sharing catch have been Special Management Areas (SMAs) which close portions of the tribal U&As to non-tribal fishers during part or all of the state fishing season and delayed state openings called "Head Starts. "Head Starts" within tribal U&As have provided up to 49 days of exclusive tribal fishing opportunity over two-thirds of the MSP Study Area prior to opening the state fishery in those areas. "

3. Page 2-94, fourth paragraph, second sentence after "..... until (insert) sometime in January." Note; openings in the last few years have been between January 1 and January 24).

4. Page 2-94, fourth paragraph, third sentence; re-write sentence to read: "With these closures, there has been an increase in competition and concentration of fishing effort in the southern area that often opens earlier and a general shift of the state fleet to the southern one-third of the MSP study Area below the U&As. Add sentence; In recent years as much as 85% of the state fleet has operated south of U&A areas. (can confirm with WDFW). After recommended additions continue with existing last sentence.

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2.4 Tribal Fisheries:

Page 2-102 First paragraph, after second sentence; add sentence. U&A areas collectively cover 3,956 square nautical miles.

2.4 Economic impact of Commercial and Recreational Fishing:

a. Page 2-105 Footnote 34; Add Industrial Economics Study and Port of Grays Harbor Study to footnote list.

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b. Page 2-107 First paragraph, add after last sentence a new sentence reading; A 2013 Port of Grays Harbor study identified 2052 jobs and \$203,000,000 in business revenue from commercial fishing activity just from the Westport marina.

2.4 Future Trends:

2.4 Barriers to Participation in the Commercial Fishing Industry: Page 2-111, second paragraph; Add new sentence at end of paragraph; "Uncertainty over future management decisions, allocation issues between user groups, the potential for future spatial displacement and restricted access to marine space causes additional uncertainty, clouds investment and entry decisions and adds additional barriers to future participants."

2.4 Oil Spills: Page 2-113, re-write paragraph to read: "Oil spills from marine traffic could potentially affect multiple fisheries for significant periods of time. The potential introduction of crude oil shipments out of Grays Harbor and the Columbia River would bring new risks from oil spills. The oil to be transported include "Bakken" crude oil a highly volatile oil prone to fire and explosion when spilled, and Canadian Tar Sands oil, (dilbit) a heavy crude oil prone to sinking when spilled. The introduction of oil transport through coastal estuaries "particularly sensitive to the adverse effects of an oil spill" (WDFW DEIS), and increase in oil tanker traffic along the coast and potentially over the often dangerous conditions existing on both the Columbia River and Grays Harbor bars have led to stakeholder increased concern about the risks of an oil spill to commercial, recreational and tribal fisheries and how quickly they could recover from such an event (Industrial Economics., 2014 Taylor et al., 2015.)"

2.10 Potential New and Expanded uses:

Marine renewable Energy: Page 2-191 fourth paragraph, third sentence, re-write to read; Spatial conflicts with and spatial exclusion of fisheries will likely result in decreased catch, increased navigation and safety concerns, increased transit times and fuel consumption, and entanglements with and loss of fishing gear.

2-10 Offshore Aquaculture: Page 2-215, first paragraph add sentence: The culture of non-native finfish and potential environmental and economic harm from escapes is of concern and could affect vast areas including areas beyond the Study Area and cause negative impacts on native finfish populations.

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Comments and recommended edits for Draft SMP Section 3 Spatial Analysis submitted by Larry Thevik WCMAC Commercial fishing representative: (For public review and comment purposes it would have been helpful if each line in the document was identified. I will do the best I can with the format provided.)

Chapter 3 Spatial analyses:

Section 3.3 Use Analysis: page 3-24, second paragraph; Note; the reference to RCW 43.372.040 (6)(c) is incomplete. This incomplete statement does not present the legislative requirements of the maps the legislature expected to be completed as a part of the Ocean Planning data collection, presentation and process. Rather than edit the mapping statute this paragraph should state all of the Statutory language in (RCW 43.372.040(6)(c). Additionally as per the mandate the mapping methodology did not "meet" the requirements of the statute but was an "attempt" to meet the mandate of the statute. A clarification of what the use analysis did and did not utilize to identify and evaluate potential conflicts is important to the interpretation of results. The legislative direction to the agencies used the term "value" to identify and quantify conflicts whereas the state agency use analysis did not. The use analysis did not assign "value" to existing uses but instead used the number of differing existing uses and the intensity of each existing use as a proxy for "value" to identify areas and number of conflicts with potential new ocean uses. As referenced above the legislative directive as contained in RCW 43.372.040(6)(c) did not contain language that prescribed maps that identified areas of existing use intensity but required mapping to identify areas of "high value" for existing use (such as fishing) and areas of "minimal conflict" with existing use (such as fishing) and potential new ocean uses. Intensity of use and number of uses is being used as a proxy for value. While this may have merit it does need further explanation. and the claim that intensity of uses and number of uses meet the mandate is specious. and disingenuous. Similarly the second to last sentence "The outputs (what outputs?) showed areas that have relatively higher renewable energy potential, but contain fewer uses or less heavily used areas" does not meet the legislative mapping mandate and should be struck.

a. Page 3-24, second paragraph would be more accurate if modified to read: "Specifically, the state marine plan law requires the MSP to include a " A SERIES OF MAPS THAT AT A MINIMUM, SUMMARIZE available data on: The key ecological aspects of the marine ecosystem, including physical 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 RENEWAL ENERGY PRODUCTION WITH MINIMAL POTENTIAL FOR CONFLICTS WITH OTHER EXISITNG USES OR SENSITIVE ENVIRONMENTS; (RCW 43.372.040(6)(c). (emphasis added).

b. Page 3-24, second paragraph, second to last sentence should be struck.

Chapter 3 Overlay output: Page 3-30, third paragraph, second sentence; Note: This sentence is an overreach of agency authority. The sentence seems to indicate that the authors can determine what the goal of a conflict resolution would be. A conflict could have a resolution option with an impact that is relatively "minimized" over another option but that does not mean the "minimized" option is not still above the "significant adverse" impact standard in SEPA or the "adverse" impact standard in ORMA.

Page 2-30 third paragraph, second sentence; strike sentence.

Chapter 3 Marxan Analysis

a. Decision to use Marxan: Page 3-31 first paragraph, first sentence revise sentence to read " The State's main purpose for using Marxan was an attempt to fulfill the marine planning law.....

General comment on Use Analysis and Marxan Modeling:

The Marxan modeling based on number of uses and intensity of uses can lead to visual presentations that miss the importance and value of areas having a fewer number of uses and fewer intensities yet may be extremely valuable to that use. Additionally, Marxan is grading on a curve. Marxan goals identify area that have less conflict than another area as a "preferred" or "low cost area" for placement of a new use. The fact is Marxan only identifies an area that exhibits conflicts something less than another area and not necessarily an area with "minimal" impact on an existing use.

Washington legislation including ORMA legislation and legislation specific to a CMSP process identify the protection and preservation of existing sustainable uses as the primary and first order of a Washington State CSMP. The legislature has made it clear that there is not an expectation to force a new use into areas that will displace or harm existing sustainable uses and coastal resources. Marxan does exactly what the Legislature has directed the CSMP to avoid. The assumption and purpose of Marxan is it WILL find an area with less impact that is not guaranteed or necessarily expected to be no, or low impact or "minimal" conflict. Marxan will not find such an area within the Washington CMSP study area. The best we can expect from Marxan for this CSMP is to identify areas where no new uses could be placed without significant conflicts and not expect it to identify areas where new uses could be placed with "minimal" conflict. Marxan modeling and resulting mapping does not meet the requirements of 43.372.040(6)(c). Map 3-17 demonstrates how poor the best results of Marxan truly are. Example: The Marxan solution in map 3-17 for a monopole energy farm is in the middle of the most concentrated area of use of the most highly valued fishery on the Washington coast.

Fishery representatives both as WCMAC members and during public comments have consistently expressed concern over the use of the term "low" intensity to describe the lesser (not as great in quantity) 25% of a fishing sector intensity. The word "low" carries a pejorative interpretation. Further recent Court rulings including Lummi vs Corp of Engineers and Tribal Culvert Case have considered impacts of 5-7% of an activity as significant and to be avoided. "Low intensity would be more accurately captured by less than 5-7% of fishing intensity. Under ORMA 43.143.030(2): "uses requiring federal, state or local government approvals...may be permitted only if the criteria below are met or exceeded"...among them : 43.143.030(2)(c) "there will be no likely long-term

significant adverse impacts to coastal or marine uses" (including Fishing). If a significant impact is something less than 7% then the current "low" standard in the maps of 25% of fishing activity to reflect a "minimal" impact falls far short of the statutory mandate to describe maps where "minimal" conflicts would occur. As is pointed out in the Document page 3-31 last paragraph: "One of the results of the analysis was the demonstration that there is clearly no place within the Study Area that has a minimal potential for conflict with exiting uses." This is the fundamental finding of the Spatial Analysis and this was not known prior to the MSP process.

The Marxan modeling based on number of uses and intensity of uses can lead to visual presentations that miss the importance and value of areas having a fewer number of uses and fewer intensities yet may be extremely valuable to that use. Additionally, Marxan is grading on a curve. Marxan goals identify area that have less conflict than another area as a "preferred" or "low cost area" for placement of a new use. The fact is Marxan only identifies an area that exhibits conflicts something less than another area and not necessarily an area with "minimal" impact on an existing use.

Washington legislation including ORMA legislation and legislation specific to a CMSP process identify the protection and preservation of existing sustainable uses as the primary and first order of a Washington State CSMP. The legislature has made it clear that there is not an expectation to force a new use into areas that will displace or harm existing sustainable uses and coastal resources. Marxan does exactly what the Legislature has directed the CSMP to avoid. The assumption and purpose of Marxan is it **WILL** find an area with less impact. That impact is not guaranteed or necessarily expected to be no, or low impact or "minimal" conflict. Marxan will not find such an area within the Washington CMSP study area. The best we can expect from Marxan for this CSMP is to identify areas where no new uses could be placed without significant conflicts and not expect it to identify areas where new uses be placed with "minimal" conflictPage 3

Fishery representatives both as WCMAC members and during public comments have consistently expressed concern over the use of the term "low" intensity to describe the lesser (not as great in quantity) 25% of a fishing sector intensity. The word "low" carries a pejorative interpretation. Further recent Court rulings including Lummi vs Corp of Engineers and Tribal Culvert Case have considered impacts of 5-7% of an activity as significant and to be avoided. "Low" intensity would be more accurately captured by less than 5-7% of fishing intensity. Under ORMA 43.143.030(2): "uses requiring federal, state or local government approvals...may be permitted only if the criteria below are met or exceeded"...among them : 43.143.030(2)(c) "there will be no likely long-term significant adverse impacts to coastal or marine uses" (including Fishing). If a significant impact is something less than 7% then the current "low" standard in the maps of 25% of fishing activity to reflect a "minimal" impact falls far short of the statutory mandate to describe maps where "minimal" conflicts would occur. As is pointed out in the Document page 3-31 last paragraph: "One of the results of the analysis was the demonstration that there is clearly no place within the Study Area that has a minimal potential for conflict with exiting uses." This is the fundamental finding of the Spatial Analysis and this was not known prior to the MSP process.

Larry Thevik, WDCFA

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WASHINGTON DUNGENESS CRAB FISHERMEN'S ASSOCIATION

12/12/2017

Page 1

Comment for Draft MSP Chapter 4 Management Frame Work and a singular revision for Chapter 5 WCMAC MSP Policy Recommendations submitted by Larry Thevik WCMAC Commercial fishing representative: : (For public review and comment purposes it would have been helpful if each line in the document was identified. I will do the best I can with the format provided.)

The following comment was submitted on an earlier preliminary MSP Draft. The present document has incorporated some of my concerns. I am re-submitting the comment and concerns because as part of the Public Comment process specific answers to questions raised are expected. To confirm my concerns have been answered I re-submit my comment.

COMMENT: The Ocean use definition in [WAC 1733-26-360(3)] may need an expanded interpretation to match the recent State Supreme Court ORMA ruling. The MSP document in its entirety and section 4 specifically need to be re-examined to determine if references to "Ocean Uses" match up with the Courts more liberal interpretation of "Ocean Uses" than prior DOE interpretation of what constitutes an "Ocean Use". Similarly, DOE has had a narrow view of what constitutes ocean transportation that would be covered by ORMA and deserving of an extended discussion within the SMP. The Court ruling on what constitutes transportation activities that trigger ORMA is more expansive than the DOE interpretation of its own [WAC 173-26-360 (12)]. While arguably not a new "Ocean Use" the Courts view begs the question whether the SMP has adequately acknowledged the threat and required review standards under ORMA for the potential high volume transport of hazardous materials through our marine space, including highly productive tribal and non-tribal fishing areas and estuaries identified as Important, Sensitive and Unique Areas (ISUs). While section 4 might not be the place to insert a more thorough discussion of hazardous material transport and potential significant adverse impacts of that transport, a more complete discussion should be included in the SMP document. It should also be recognized by the authors that with the Courts ruling on what transport activity qualifies as an ocean use, the reference to the ocean uses list in [WAC 173-26-360 (8)-(14)] in 4.1.4 (2) is now an acknowledgement that hazardous material transport, (for example: projects introducing high volume crude oil transport through Grays Harbor), would qualify for project review criteria described in the management framework.

Chapter 5: WCMAC MSP Policy Recommendation;

3. Additional Issues Related to Protecting and Preserving Existing Sustainable Uses; Page 5-8, footnote 7; Identify miles as nautical miles for all three states and revise the number of miles for Washington, stated as 157 miles, (Which is Statute miles) to 136 nautical miles. Other States are already expressed in nautical miles.

Larry Thevik, WDCFA

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WASHINGTON DUNGENESS CRAB FISHERMEN'S ASSOCIATION

12/10/2017

Page 1

Comments and recommended edits for MSP Draft EIS: submitted by Larry Thevik WCMAC Commercial fishing representative: : (For public review and comment purposes it would have been helpful if each line in the document was identified. I will do the best I can with the format provided.)

Fact Sheet: Note; there are no page numbers in the Fact Sheet

- a. Second page, second paragraph, third sentence; strike "commonly"
- b. Second page, bullets; Insert bullet after second bullet: Ocean Resources Management Act
- c. Second page, bullets; add where appropriate acronyms
- d. Fourth page, first paragraph; insert Ocean Resources Management act after National Environmental Policy Act
- e. Fourth page, Under **Location of Background Material**, second sentence; note; The MSP is not charged with "providing" for new opportunities but rather to gather data, identify areas of conflicts, and among other things provide procedures and recommendations for potential new economic opportunities that meet all applicable laws and regulations.

Suggested edit: modify sentence to reflect above.

Executive Summary:

First page under **Washington's Pacific Coast** second paragraph; Note present paragraph is insufficient description of the Study Area.

Recommended edit "The MSP study area consists of marine waters of the Pacific Ocean adjacent to Washington's coast line from the intertidal zone out to the continental slope. It extends from ordinary high water on the shoreward side out to a water depth of 700 fathoms (4,200 feet). The 700 fathom curve ranges from 35 to 55 nautical miles offshore with an average distance of approximately 40 nautical miles westward of the shoreline. Extending from Cape Flattery on the north of the Olympic Peninsula south to Cape Disappointment at the Mouth of the Columbia River, the MSP study Area includes two large estuaries : Grays Harbor and Willapa Bay, covers a distance of 136 nautical miles, including 480 nautical miles of coastal shoreline and spans 5,839 square nautical miles (7,732 statute miles) of marine waters."

Purpose and Need :

page 3 first paragraph; Note; there is a presumption in this document that new uses WILL occur. That presumption should not be expressed in this summarizing document. New uses will occur only if successfully permitted.

Page 2

Page 3, first paragraph, second sentence; insert "if permitted" after "can" and before "successfully":new development can, "if permitted" successfully co exist.....

Page 3, second paragraph; Note; The legislative direction through the MSP enabling statutes "**require**" the Plan to preserve and protect existing resources and existing uses. Statutes do not simply "encourage" protection. See RCW 43.372.040 (4), (a-f) and (8).

Revise Page 3, second paragraph to reflect above. "The Draft MSP "requires" protection of existing uses..... Note: other areas within the MSP document , and MSP EIS document that do not reflect this mandate need to be modified to do so

Draft EIS Background and Objectives:

page 4, third paragraph, **Purpose and Need:** Note as above; there is a presumption in this document that new uses WILL occur. That presumption should not be expressed in the EIS document. New uses will occur only if successfully permitted.

Page , third paragraph, second sentence; insert "if permitted" after "can" and before "successfully":new development can, "if permitted" successfully co exist.....

Applicable Regulations, Plans, Laws, and Treaty Obligations:.

a. Page 6, second paragraph, bullets; insert Ocean Resources Management act after National Environmental Policy Act

b. Page 6 bullets; add where appropriate acronyms

c. Page 7, first series of bullets add additional bullet that reads; " Federally designated Usual and Accustomed (U&A) tribal treaty fishing areas."

Draft EIS Alternatives:

a. Page 10, fourth paragraph; Note; there is a typo in third sentence; recommend re-read and correct.

b. Page 10, fifth paragraph, first sentence strike "minimize" and replace with "present minimal"

Action No alternatives:

Page 11, third paragraph first bullet; strike "minimize" and replace with "present minimal"

Draft EIS Affected Environment:

Page 15, fourth paragraph; As noted earlier Study Area description is insufficient: Revise paragraph to read; "The MSP study area consists of marine waters of the Pacific Ocean adjacent to Washington's coast line from the intertidal zone out to the continental slope. It extends from ordinary high water on the shoreward side out to

a water depth of 700 fathoms (4,200 feet). The 700 fathom curve ranges from 35 to 55 nautical miles offshore with an average distance of approximately 40 nautical miles westward of the shoreline. Extending from Cape Flattery on the north of the Olympic Peninsula south to Cape Disappointment at the Mouth of the Columbia River, the MSP study Area includes two large estuaries : Grays Harbor and Willapa Bay, covers a distance of 136 nautical miles, including 480 nautical miles of coastal shoreline and spans 5,839 square nautical miles (7,732 statute miles) of marine waters. "

Page 15, fifth paragraph; revise second sentence to read; "This portion also overlaps with the majority of the 3,956 square nautical miles, of the Usual and Accustomed Areas (U&A's) of four coastal treaty tribes, and the 2,408 square nautical miles of the Olympic Coast National Marine Sanctuary."

Page 15, fifth paragraph; revise second sentence to read; "This portion also overlaps the lower half of the Quinault Tribal Usual and Accustomed Area, (U&A), and includes the large estuaries of Willapa Bay and Grays Harbor."

Draft EIS Environmental Impacts of Alternatives:

Page 16, paragraph 2, second bullet, under **Direct Impacts of installing new infrastructure**; revise bullet to read; "Displacing existing uses from access to the site and if site presents potential entanglement displaces existing uses adjacent to site."

Draft EIS under Similarities and differences in impacts:

Page 17 first paragraph last sentence; Revise to read; Since proposals would still be subject to the same approvals and existing policy criteria, the difference in impacts and degree of impacts would likely be minimal between the Proposed MSP and the no-action alternatives in the areas of the MSP subject to state jurisdiction.

Draft EIS under Baseline Conditions and Trends, Data Analysis:

Page 17, fourth paragraph; Note; As has been mentioned previously in my MSP comments (see submissions,) the mapping exercise in the MSP (Chapter2, Appendix A; maps and Chapter 3) are an "attempt" to fulfill the Statutory mandates in RCW 43.372.040(6)(c), differ substantially from that specific mandate and do not "fulfill" the mandate as stated in this paragraph.

Draft EIS under Impacts of establishing ISUs:

Page 17, first paragraph ISUs; revise first sentence to read; "The established ISUs are indentified throughout the entire Study area. The ISUs within state waters are protected with the Plan."

4. Fisheries Protections:

Page 21, first paragraph, first sentence, under **Protections**; insert "adverse" after "minimize" and before "social".

Page 4

Cumulative effects of alternatives:

Page 27, first paragraph, last sentence; Revise sentence to read; "And ensure they do not have cumulative, significant adverse impacts on existing uses and to the environment."

Appendix A: Marine Spatial Plan Studies:

Page 28, first paragraph, last sentence to read; "Please see additional studies below."

Add referenced studies to page 29 before **Ecosystem indicators and status studies.** (studies are listed in Chapter 5 page, 5-3)

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