

**From:** Dale Beasley [mailto:crabbytoo@centurylink.net]  
**Sent:** Tuesday, December 12, 2017 3:00 PM  
**To:** Hennessey, Jennifer (ECY) <JENH461@ECY.WA.GOV>  
**Subject:** CCF/CRCFA comments to Washington Coastal Marine Spatial Plan and EIS

Jennifer

Please include these comments to the CMSP draft & EIS in the Administrative Record. We are looking forward to how these comments will be addressed in the final draft.

Our hope is that these comments will generate some positive change in the draft CMSP & EIS to better protect and preserve fishing, to Avoid Conflict, and only allow minimal adverse impacts to fishing and prevent new use from harming coastal communities anywhere in the EEZ as intended by the legislature.

The Plan needs a map showing where new use can exist that has the least amount of conflict and adverse impacts to fishing and other existing uses that meets the legislature's intent – currently this map is not in the CMSP.

The Fisheries Protective Standards rely to heavily on minimization of adverse impacts and insufficiently on avoidance of adverse impacts. The most recent ORMA additions 2010 and new rely on Avoid and minimal impacts, not the original recognition of “significant adverse impacts” and are a much higher standard of protection than the original 1989 portion of the Act. This very important distinction needs to be addressed in the final version of the Plan and EIS.

The updated coastal SMP's need to be much more prominent in this Plan, currently they are next to invisible.

The fishing industry appreciates all the hard work and effort put into this colossal project by all the participants,

Dale Beasley, President CCF & CRCFA



## Coalition of Coastal Fisheries

Coastal Office: PO Box 1448, Westport, WA 98595 – 360 642 3942, Cell 360 244 0096

Administrative Office: 806 Puget St. NE, Olympia, WA 98506 – ofc: 360 705 0551, Fax 360 705 415410

On watch serving the needs of the coastal fishing industry and coastal fishing communities  
Fishermen Working Together since 1979

### Officers

Dale Beasley, President  
PO Box 461  
Ilwaco, WA 98624  
360-244-0096  
[crabbytoo@centurylink.net](mailto:crabbytoo@centurylink.net)

David Hollingsworth, VP  
Doug Fricke, Secretary  
Coordinator  
Jody Pope, Treasure,

### Directors

Bob Alverson  
Bob Kehoe  
Sawin  
Bob Lake  
Kent Martin  
Scott McMullen  
Dick Sheldon  
Butch Smith  
Ray Toste  
Louie Hill  
Brian Allison  
Carl Nish

### Organizations

American Albacore  
Fishermen Association  
Bandon Submarine Cable  
Council  
Columbia River Crab  
Fisherman's Association  
Fishing Vessel Owner  
Association  
Grays Harbor Gillnetter's  
Association  
Ilwaco Charter Association  
Puget Sound Crab  
Association  
Purse Seine Vessels Owners  
Association  
Salmon For All  
Washington Dungeness Crab  
Fishermen's Association  
Washington Trollers  
Association  
Western Fishboat Owners  
Association  
Westport Charterboat  
Association  
Willapa Bay Gillnetter's  
Association  
Willapa-Grays Harbor  
Oyster Growers Association  
**Executive Director**  
Tom Echols, CEO  
Echo Enterprises NW  
Cell: 360 951 2398

RE: Washington CMSP & associated EIS review

12 Dec. 2017

• **Intent** of the Washington legislature is to offer special marine water protections to only the four Pacific coastal zone fish/seafood dependent counties through ORMA from upland to 200 miles offshore. History also plays a major role in the legislative intent of a series of coastal legislations affecting the coast back to 2007 or further the original 1989 bill to Protect and Preserve Fishing and other existing preferred coastal uses. Recent Washington Coastal Marine ORMA legislation has become even more rigorous to **AVOID CONFLICT** and conditionally allow new use that produces **only MINIMAL ADVERSE IMPACTS** to Pacific coastal marine waters and existing uses to prevent large new marine water projects from disrupting and displacing existing use like the Burt Hamner Grays Harbor Ocean Energy (GHOE) project that is a different intent than any other Coastal Marine Planning Legislations in the nation that were legislated to install new use in the ocean by trading off existing uses. No tradeoffs, NO HARM to coastal communities in Washington – **Protect and Preserve Existing uses including fishing as the priority use of COASTAL marine waters.** The Plan and EIS need to better magnify this UNIQUE intent of the legislature to limit HARM to coastal communities so that it is crystal clear and easily understood by any potential new use arrivals. The large GHOE project prevention was the impetus of the legislation. HISTORY MATTERS.

• **Unanimous** ORMA Washington Supreme Court Decision affecting the Pacific coastal zone, only the four coastal counties, to preemptively protect and preserve fishing as well as reach as far as to **prohibit harmful new use** projects utilizing simple adverse impacts as the new higher protective standard for existing uses supports the AVOID CONFLICT directive to preemptively address the highest fatality rate of any occupation in the nation if the NW fisheries. The only Washington Supreme Court Decision relative to ORMA implementation and far reaching effect needs to be thoroughly reviewed and applied broadly to the Washington “Coastal” Marine Spatial Plan and EIS as the 9 justices’ unanimous Decision is highly supportive of the legislative intent to preemptively stop HARM to coastal communities that does not have to be irreparable significant harm to be offered preemptive protection.

• **Pacific County** Commissioners request that the county SMP be included in the State/NOAA CZM certifications to better protect coastal citizens and fishing that has not been properly integrated into the CMSP as an existing authority as intended by the legislature. The Pacific County ocean regulations date back to 1997 and specifically omitted from CMZ certifications undermining and disrespecting the will and intent of the legislature and congress. The SMP update included serious curbs on new use to address new pressures on the coastal communities and to reduce excessive fatalities by initiating new use in specialized zones, areas for high intensity

use only with minor exceptions. The EIS even fails to list the Coastal Jurisdictions SMP's as local authorities that MUST be met as a part of the Plan.

- **Legislative history matters** to clarifying legislative intent and has been consistent since at least 2007 to protect and preserve coastal fishing communities from HARM (with special emphasis in fatality rates) and provide direct coastal input into coastal decisionmaking in all coastal bills passed by the legislature including SB 6350. The only coastal bill to fail, SB 5213 in 2007 was one that did not include coastal citizens in the decisionmaking process and was successfully opposed by CCF as a result of this omission further reflecting the intent of the legislature to protect and preserve fishing and water dependent coastal communities from HARM and provide the fish/water dependent communities a strong voice at the table in the outcomes associated with managing coastal waters of the 4 Pacific coast counties to result in NO HARM OUTCOMES to existing uses led by fishing. Washington is the only state to initiate Coastal Marine Spatial Planning to protect existing use including fishing as the primary intended outcome of the CMSP process. Dropping the C from CMSP in the Plan and EIS is offensive to the coast that is specifically protected by ORMA that only affects the four Pacific coastal counties. This is a **Coastal Marine Spatial Plan** and does not affect the other two marine areas in the legislation and this part of the states Marine Spatial Plan has added protections not available to the other areas in the state.
- **Executive Orders** – At least two executive orders should be incorporated specifically into the Washington Coastal Marine Spatial Plan/CZM certifications – 12898 and 13777 for full consideration in the mandated CZM state/NOAA certifications. 12898 gives low income coastal areas special protections similar to ORMA. 13777 mandates that all federal regulations and actions are reviewed in the long shadow of impacts to JOBS and that for every regulation that is added one needs to be removed. This aligns well with the mandate in the Washington CMSP law that dictates NO new regulations will result from the implementation of the CMSP process.
- **Basic defect** in the Washington Coastal Marine Spatial Plan is that a coastal needs assessment involving coastal citizens to inform decisionmaking utilizing evidence-based choices targeting the Big Picture of coastal needs was never accomplished so needs could not be directly addressed within the Plan. The John Kliem “Coastal Voices” report was buried and not utilized and did not specifically address All needs, but still had some valuable contributions that could have been much more closely addressed during the process.
- **Basic defect 2** – The Plan and EIS addresses “significant” adverse impacts of 1989 original ORMA to existing coastal uses and does not adequately address the much higher NO HARM standards to simply “avoid conflict” and “minimal adverse impact” found in the recent ORMA legislation which places a much higher standard on new use in coastal waters to protect the fisheries and more specifically address the insane fatality rate already occurring in the fisheries.
- **Basic defect 3** – the fate of the coastal fisheries that the legislature intended to protect and preserve is not secure in this draft CMSP where “process” alone that is inaccurately based on allowing up to additional significant impacts, not avoidance of impact to fish dependent communities is a serious defect that continually resets the baseline of cumulative adverse impacts already forcing the fishing industry toward bankruptcy from existing adverse impacts that are being ceremoniously ignored in this resetting of the impact baseline. Not acceptable, corrective action required. Continuing to ignore and continually resetting of the baseline impacts marginalizes the future of fishing on the coast and with it the entire economic stability of the coast which this draft Plan does and is totally unacceptable subdiverts the legislative intend and totally ignores the Washington Supreme Court interpretation of ORMA to preemptively protect and preserve existing use including fishing.
- **Basic defect 4** – **NO needs assessment** was done to understand or act upon what the coast needed to occur in offshore of Washington to ensure the coastal communities’ wellbeing. Simple answer, rejuvenate the harvestable salmon to energize the coastal economy and add resiliency to make the coast great again.

Salmon built the coast and the deplorable demographics of the coast occurred as harvestable salmon populations were allowed to deteriorate from suppression of production in the mitigation hatcheries that were built to make up for lost salmon spawning and rearing grounds that built the inland economy – It is all about JOBS, JOBS, JOBS, the JOBS that were discussed at the very 1<sup>st</sup> MRC Summit in Forks, not the number of hospital beds in Port Angeles or the number of carrots at the local Safeway that contributes to the wellbeing of a community. Salmon was KING on the coast in the past and Salmon can be KING again if the spatial access to the coast is still available when, not if, we get our harvestable salmon populations humming again especially salmon production in areas on the coast and west of Bonneville Dam on the Columbia River. We also need to rejuvenate as many miles of salmon streams as we can that are not adjacent to corrosive road runoff that is currently killing returning adult salmon before they can even spawn in the streams. No hatchery supplementation, no salmon for the future. Lesson here is that mitigation has been lost over time and needs to be increased significantly to address declining salmon populations.

- **Salmon recovery** key to coastal wellbeing needs to be sustainable with significant increased harvestable levels as a part of Washington CMPS is missing. As Domoic Acid threatens the major coastal use, Dungeness crab, alternatives to support coastal community economic stability and viability requires salmon recovery which will give added resiliency that needs to become a much more significant part of the Washington CMSP as indicated on pages 2 and 6 of SB 6350. Increasing harvestable salmon hatchery production will have positive impacts on the wellbeing of coastal communities and reduce the pressure to fish or go hungry in the dangerous midwinter Dungeness crab fishery reducing abysmal fatality rates in coastal fisheries by offering an alternative to participating at danger filled ragged edge of incoming midwinter storms. This response to the Plan would have been stronger and more fact filled if WDFW had honored their commitment to supply the materials in the CCF FOIA request of WDFW of last May 2017 relative to salmon. Working together to enhance salmon to strong harvest levels we can and **MUST make the coastal economy great again** through enhanced salmon production (both hatchery and natural spawning) that will contribute much needed coastal JOBS that will address the deplorable coastal demographics that have deteriorated with the decline of salmon access in the coastal zone. Salmon can become infectious to coastal growth, stability, and economic viability like no other economic development can possibly accomplish. Please note that “monitoring” has not stopped the horrific loss of harvestable salmon on the coast that mitigation measures were designed to prevent JOB loss in fish dependent communities as preemptive mitigation measures of fully operational salmon hatcheries is being abandoned in the face of these massive declines that are going unmitigated and certainly not addressed by WDFW wild fish policy, a loser for fish dependent communities, just one more dismal failed policy led by the unproven HSRG theory that is failing people and costing JOBS that must be reviewed and revised under Executive Order 13777 to bring back the JOBS that have been lost due to this errant failed policy.
- **Draft CMSP** does far more than encourage the protection of existing uses enshrined in the EIS, the Law demands that **Conflict be Avoided** and new use is conditional to only producing MINIMAL adverse impact to existing uses as much higher standard than the “significant” adverse impact listed in the EIS as well as standards to be placed much more prominently in the Fisheries Protective Standards in the Plan so that potential applicants understand up front that Washington Fisheries Protective Standards are much more protective than other states that have adopted a Coastal Marine Spatial Plan. The EIS focuses on Minimizing adverse impacts which is a mischaracterizes the legislative intent to AVOID CONFLICT and added emphasis was added by the Washington Supreme Court to Preemptively Protect and Preserve Fisheries which the newer ORMA legislation intended to do by introducing higher protective standards for all existing uses in just the four coastal county area. Review of the Supreme Court Decision and its application to the Plan and EIS needs to be fully integrated into the Plan and EIS.

- **Agency MSP cannot create new law**, but the Local Jurisdictions were mandated by the Legislature to update their Shoreline Master Programs which included the update of 1997 Pacific County SMP Ocean Section 6 that included a new adequate High Intensity Zoning Area specifically to protect existing industrial use (deepdraft shipping and dredge disposal sites) and supply a new use location that will still need to obtain the required permits. See new SMP local maps for inclusion in the Washington Coastal Marine Spatial Plan that effects 32 of the 38 miles south of Westport that effectively addresses the legislative mandates in ORMA to avoid conflict with existing use and to only allow MINIMAL adverse impact to existing uses, the new standards in recent ORMA updates. The old standard of “significant adverse impact” has been replaced in the four counties affected by ORMA and the Plan and EIS has failed to make this adjustment and properly add accountability to the new higher standards (Avoid Conflict and only Minimal Adverse Impact replacing Avoid, Minimize, and Mitigate) as intended by the legislature in the CMSP ORMA legislations is sorely lacking in this draft Plan and associated EIS.
- **Crab Gear entanglement impacts** on communities in both the Plan and EIS are insufficiently portrayed by lumping this potential loss of any future fishing industry in Washington offshore waters which waters down the reality facing fishing by listing a real backbreaker of the fishing industry with marine debris and bird strikes by wind turbines. Deplorable presentation considering the dire consequence of potentially losing the Washington fishing industry completely.
- **Adequate Bonding** to ensure that failed or abandoned industrial facilities needs to be far better clarified to ensure that LLC bankruptcies do not leave the taxpayer on the hook for complete decommissioning expenses that need to be the complete responsibility of the industrial developer.
- **Ecological ISU’s set an AVOID standard to protect sensitive areas but** does not coordinate with coastal economic dependencies that the communities depend upon for their economic stability and viability for which the SOC has failed to set adequate areas to avoid conflict existing uses leaving communities vulnerably unprotected by only an uncertain process that NEPA is not designed to adequately provide “certain” protective outcomes necessary to Avoid Conflict. Soft bottom which supplies over 90% of the fish tonnage necessary to maintain the fish dependent communities is devoid in the Plan or EIS and is a significant contributor to the wellbeing of the coast as an area to avoid leaving coastal fish dependent people extremely vulnerable to displacement, disruption, and ultimate failure of next generation fishermen.
- **Fisheries Protective Standards** are laudable, and this comment letter addresses this issue throughout. The Fishery Protective Standards miss the legislative intent to ensure that Conflict with existing fishing is Avoided, not just significant conflict avoided but **MUST** preemptively protect and preserve fishing from harm employing much **higher minimal adverse impact standard** before a project can proceed in the coastal marine waters. The Fisheries Protective Standard mischaracterizes and under protects the fisheries that the newer higher standards legislated in 2010 and after actually provide including outright prohibition directed by the only Supreme Court Decision ever issued to interpret and better define the legal implications of ORMA that must be fully address the broad protections of ORMA only offered to the four coastal county area marine waters and associated uplands covered by the coastal counties Shoreline Master Programs that have been inadequately incorporated into the Plan or EIS. The Supreme Court clarified that the agencies are not at liberty to alter existing laws of the state or counties, this includes ignoring them. Use of the term minimize in the fisheries protective standards could easily result in far more than minimal impact to fisheries the legislative intended as new standard of coastal protection especially considering the massive extent of new use in ocean energy required to extract even “minimal” amounts of available energy from offshore waters that was not shared with the public or the legislature in this draft Plan or EIS.
- **CZM state/NOAA certifications** – This Washington Coastal Marine Spatial Plan is not done until there is a successful and protective certification in place that adequately addresses the UNIQUE nature of the



Washington Plan that has been put forward in the specialized ORMA law that is specific to the four coastal county areas with added protections not offered in the rest of the state or nation. The WCMAC, coastal local jurisdictions, MRC's, and those most affected by this mandated integration of the Coastal Marine Spatial Plan fishing must remain fully engaged until the certifications accurately reflect the intent of the legislature to protect and preserve the existing uses including fishing that adequately address existing and future cumulative adverse impacts on the coastal communities not found any place else in the nation that the CMSP law intended to protect and preserve with added emphasis from the Washington Supreme Court to act preemptively to protect and preserve existing uses including fishing from reasonably foreseeable adverse impacts that will be difficult to achieve. This process is far from done, full engagement is still necessary. This Plan once complete is a living document that must not be put on the shelf and forgotten; it is to be used as intended to protect, stabilize, and preserve the economic viability of the coast by utilizing some of the added toolkit in the ORMA legislation that has not been addressed to date. **All aspects** above and more need to be better integrated into the outer coastal Washington CMSP to address and clarify legislative intent to protect and preserve existing sustainable uses including fishing from HARM in coastal marine waters of the outer coast from 0 – 200 miles offshore as directed by the legislature to Avoid Conflict and only allow minimal adverse impacts to existing uses including fishing as opposed to the more traditional process to avoid, minimize, and mitigate, mitigation that is never fully complete to issue new permits that almost always allow projects to move forward.

Thank you for the opportunity to present the Coalition of Coastal Fisheries and the Columbia River Crab Fisherman's Association to make recommendations for the continuation and improvements for managing the Washington Coastal Waters and how it will be incorporated from 0 – 200 miles offshore within the Washington Coastal Zone/NOAA Approved Certification Process. CCF/CRCFA acknowledges and appreciates the considerable work, time, and guidance by numerous individuals, groups, agencies, and legislators associated in producing a Washington Coastal Marine Spatial Plan and Programmatic EIS as an active participant in this project; colossal and challenging effort. Fishing is the existing coastal marine water user with the most to lose from initiation of any new use into extremely condensed available and valuable fishing grounds. This is quite honestly, uncharted territory in that Washington CMSP is **UNIQUE** in the nation with multiple federal obligations that **NO** other state in the nation must navigate; 70% of the coast is either Olympic National Marine Sanctuary and or under 1850's Stevens tribal treaty rights affecting most offshore waters with 50/50 fish sharing requirements found nowhere else in the nation, **disproportionately burdening** the Washington coastal fishing communities like **NO** other state in the nation as a cumulative adverse impact on coastal communities that is highly significant and not adequately put into proper perspective as such a large impact that new use may be completely incompatible with current existing uses of the coastal zone. Even minor additional tribulations could cause catastrophic, tragic consequences to current and future generations of fish dependent communities that are burdened by this adverse impact to the maximum extent pushing fishing extremely close to a major tipping point of no return. This is an extremely serious consequence that needs considerably more attention in a final draft EIS & Plan. The Plan does not present the "sensitivity" necessary to preemptively protect and preserve fishing as directed in the CMSP ORMA legislation.

Fishing **MUST** to be directly at the table to ensure good faith deliberations to allow our unfiltered candid comments to help make better informed decisions to better protect those most affected by the Plan outcomes and to ensure **the intent of the Washington CMSP legislation that is UNIQUE in the nation is carried out to the full extent of the law and legislative intent**. This draft CMSP/EIS will translate into State/NOAA approved CZM program required by the legislature to be incorporated into CZM action for the benefit of national, state, and local coastal citizens' wellbeing. The legislature understood the importance and potential new effects of the not just the 0 – 3 miles offshore Washington but also the 3 – 200 mile federal exclusive economic zone to the coastal fish dependent communities of Western Washington and fully intended to ensure the economic viability

and stability of these fish dependent communities well into the future as a high priority. Washington is UNIQUE in the nation in that Washington Coastal Marine Spatial Plan is built on top of the 1989 Ocean Resource Management Act with the express intent to “Protect and Preserve Fishing and other existing uses and only conditionally allow new use that first and foremost AVOIDS CONFLICT with existing uses, particularly high value fishing grounds and only allows MINIMAL adverse impacts from new use initiation in coastal waters of the four coastal counties that are expressly separated from the rest of the states’ SMP’s for **EXTRA PROTECTION. This extra protection is only offered by legislation to the four coastal counties most vulnerable, disadvantaged, and disproportionately burdened coastal water/fish dependent counties in Washington that will be disproportionately impacted by any additional onerous loss of fishing grounds.** High value fishing grounds in context of the Washington CMSP legislation means areas that the coastal fish dependent communities rely upon for their continued economic viability and stability not simply broken out by percentages of income or existing use in 25% increments as has been done by other state CMSP processes that did not have the primary outcome intended by the Washington legislature to Protect and Preserve existing use including fishing as the primary motivation of the CMSP legislation that was a direct response to ensure that the Burt Hamner’s Grays Harbor Ocean Energy style proposal, or other massive new use did not cause disruption or displacement of fishing in the marine waters of coastal the four coastal counties adjacent to the Pacific Coast covered by ORMA. These special protections are not given the necessary special deference the legislature intend by only including the four Pacific coastal counties. In reference to the upcoming additions to the state/NOAA CZM certifications the required integration of the state CMSP has already been suppressed to federal dominance and insufficient attention to UNIQUE details that the federal actions offshore Washington MUST be FULLY consistent with state and local authorities with only a couple of exceptions where adverse coastal effects can be easily demonstrated to effect natural resources or **use of those resources** that involves adverse impacts to fishing out to 200 miles from shore as intended by the Washington legislature. Adverse verses significant adverse impact is a very important distinction with added protection that needs to carry more weight in this upcoming CZM collaboration offshore Washington that is UNIQUE in the nation. Normal NEPA/SEPA processes sequence Avoid, Minimize, Mitigate; recent **ORMA legislation requires Avoid Conflict and only conditionally allows new use in coastal waters that has MINIMAL ADVERSE IMPACT to existing uses including fishing** which by definition precludes large industrial scale facilities in Washington Coastal Waters that by their very exclusive existence would more than impede existing uses that are especially vital to the future economic security of the coast south of Westport where heavy fishing effort transfers have concentrated fishing and as an example currently 85% of all crab harvest for the historical coastal crab fleet is now taken in the very precious very dependent area in less than 30% of the SW Washington coast; the only place that new use is known to be able to locate because of other federal obligations; sanctuary and tribal treaty U & A’s. No other place on the Washington coast will have as much direct conflict competing for space to exist than the area south of Westport; Conflict that the legislature directed to AVOID, not minimize and mitigate but AVOID, a much higher protective standard in the law.

The History of the ORMA legislation and the intent of the legislature to ensure that CMSP history other state’s that were willing to RISK coastal fishing did not repeat placing fishing at extreme RISK in Washington and was the primary impetus for the recent ORMA legislation with underlying intent to DO NO HARM to coastal fish dependent communities. The legislature put many legislative tools in place to accomplish that NO HARM standard that has been distorted but not completely abandoned by the CMSP process that did not fully understand this underlying NO HARM to fisheries intent, or simply disregarded or worse, defied the intent of the legislature. We prefer the use the “did not fully understand” rather than the defiance of the state legislature in order to give the agencies/council the benefit doubt of their wayward activities. Far too many have a huge misconception that there are limitless marine areas where displaced fishermen can go to earn a viable family wage and never examine or properly consider the cumulative effects of existing displacements led by the highly significant adverse impacts of the Rafeedie Decision that has taken 50% of all fish (income) away north of Westport on 70% of the



Washington coast causing extreme fishing effort shift to the 38 miles of SW Washington offshore waters greatly reducing the individual fisherman’s historical share of the fish pie contributing to the “significant” tipping point so pronounced for the next generation of high debt fishermen that currently have the least access to fish of any generation in history to service the largest debt in history and buffer against natural fluctuations in natural resource abundance. This Plan does not adequately address the **Significant HARM that has already occurred to the Washington fishing fleet that is UNIQUE in the nation** and found in NO other state that has enacted Coastal Marine Spatial Planning legislation. Any additional harm could easily lead to fisheries disaster because the fishing fleet is already at a tipping point that is not adequately addressed in this Plan but recognized by the legislature when the Plan legislation was enacted with directions to Protect and Preserve fishing.

As long as the CMSP documents ignore the potential massiveness of the ocean energy FOOTPRINT required to produce any significant amount of energy and ignores the exorbitant costs associated with these new ocean energy uses any one reviewing the Washington Coastal Marine Spatial Plan and EIS is unburdened by FACTUAL REALITY that the ratepayer and taxpayer will ultimately shoulder untenable crushing debt as the existing coastal economy is flushed down the drain pushing more coastal citizens into deep poverty, lowering the median family income, and exacerbating the worst demographics in the state impinging on the DO NO HARM standard significantly. Not conjecture but FACT kept off the table during the CMSP process to prevent public outcry at the huge expense and massive loss of public access resulting in significantly diminished fishing grounds.

No proposed mitigation can alleviate deadly adverse impacts on particularly vulnerable coastal communities associated with any additional lost access to fishing grounds from introduction of exclusive new use on top of the Rafeedie impacts that are REAL and completely documentable in massive lost dollars in the fisheries putting excessive economic pressure on the fleet resulting in the highest fatality rate of any occupation in the nation in Dungeness crab in NW waters, at a rate twice as high as the now infamous Bering Sea King Crab Fishery sensationalized on national television, the Deadliest Catch. Fishing disturbances on the coast have already reached such a significant adverse cumulative impact the result is simply more fatal tragedy that is reasonably foreseeable on top of the significant fishing ground already in NO Fishing NO Income zones, tragedy reflected in the highest level of fatality in any occupation anywhere in the nation. This fatality rate increase is not conjecture or supposition it is current reality that is an effect of loss of access to natural resources that must be recognized and prevented from increasing that MUST be included in the Washington CZM state/NOAA certifications. The Fisheries Protective Standards must include methods to specifically address this miscarriage of justice that already plagues these coastal rural counties driving poor demographics further into the ditch. The Washington fisheries are currently soldering the entire marine water conscious burden of the nation for atrocities that occurred over 150 years ago when the Stevens Treaties were enacted and extended westward. PROTECTIVE ACTIONS are required to prevent any additional fatalities brought on by additional loss of any fishing grounds that are already highly compressed by the Rafeedie effects of the 50% loss of fish access. Minimizing additional adverse impacts is not enough protection, **Avoidance of Impact is essential** as intended by the legislature.

**Ocean Zoning** and directing new use to specific areas would be a far better way to direct potential new use in Washington coastal zone within the GLD to avoid conflict with existing uses or ecological function. Examination of the individual uses in the document are hard to discern. Uses that the coastal communities rely on heavily should be no new use zones or protections necessary for the coastal communities will not occur. Using the zoning concept is inappropriate on land to place an industrial development in a residential use area; in the coastal waters it would be inappropriate to locate an industrial facility in a high density marine vessel traffic area or a valuable fishing area. Pacific County addressed this by placing new use in a small explicitly dedicated industrial use areas where existing deepdraft shipping and ocean disposal activities were already well established and do not displace recreational or commercial fishing except by only minimal adverse impacts that are part of the high intensity areas. Using process alone as found in this document is too easily manipulated and opaque a situation and similar





to the Marxan mapping tool where the output that is desired can be decided by the input materials and not an open transparent process that the public or the legislature can follow easily to a realistic conclusion based on factual evidence presented.

In the Future, any BOEM of other **agency Taskforce** that may be established in relationship to leasing areas or establishing new use in the Washington Coastal Zone adjacent to the four ORMA covered counties **MUST include direct representatives of the coastal fishing industry** similar to the composition of the Washington Coastal Marine Spatial Plan to better protect and preserve, avoid conflict, and conditionally allow only minimal adverse impacts the coastal fish/water dependent communities as intended by the legislature by over a decade of protective coastal legislation involving a number of coastal protectionist bills. It is obvious that the legislative intent is to have everyone at a single table as equal collaborators and is self-evident in the legislation directed Washington Coastal Marine Advisory Council that is composed of agencies and primary coastal citizens including a heavy dose of 3 fisheries representatives; two commercial and one recreational. Past Federal/State Taskforce processes of other states have excluded this direct coastal citizen and fishing representation that is so necessary to accomplish the Washington legislative intent that has historically demanded **DIRECT** coastal citizen and fishing interests be directly at the decisionmaking table in multiple past legislative bills. **HISTORY MATTERS.** The Washington coastal situation is **UNIQUE** in the nation and demands this justified **EXTRA PROTECTION** not offered in other state/federal taskforce Coastal Marine Spatial Plan processes to ensure that the **DO NO HARM standard** is up front in any actions taken in the four coastal county area from 0 – 200 miles from shore as intended by the legislature and upheld **UNANIMOUSLY** by the Washington Supreme Court on January 12, 2017 to **PREEMPTIVELY Protect and Preserve Fish/water dependent coastal communities economic stability and viability from HARM that the legislature intended.** As early as 2007 the legislature enacted HB 2049 with the intent to specifically address **local** coastal challenges, provide for **UNIQUE local** solutions, and provide a **direct voice** for coastal citizens in future management and wellbeing of their **local** communities of the “outer” coast in waters **MOST IMPORTANT** to the **local** coastal fish dependent community. Also in 2007 SB 5213 (another ocean bill) failed to pass because the bill did not engage coastal people directly in the decisionmaking process, not that its underlying intent of developing an ocean stewardship policy and ethic that would have been good for the wellbeing of the Washington coastal communities. The legislature has shown its intent to **DIRECTLY** involve coastal citizens including the fishing industry in the decisionmaking process that has an effect on the wellbeing of the coastal fish/water dependent communities. To better understand the legislative intent to directly involve **LOCAL** citizens in the policy making and development of coastal activities one must read the original coastal oriented bills as introduced to the legislature to get a full understanding of the history and intent of the legislation, not just the resulting RCW’s or resulting WAC’s as put into regulation. CCF was at the forefront directly involved with the prime legislative sponsors and the legislature’s drafting attorneys behind the closed doors that drafted all this coastal specific marine water management legislation from its conception over all the bills for a decade or more. Consider, the only piece of ocean related legislation that failed to pass the legislature over the past decade did not directly include coastal citizens and fishing representatives in the bill as direct participants in the decisionmaking process. This is important historical information and context that has a direct bearing on the makeup of any coastal decisionmaking body that effects the coastal zone that was placed into legislation that was supported by the Coalition of Coastal Fisheries with the express intent to Protect and Preserve seafood production and **DO NO HARM** to seafood producers on the coast underlying all coastal marine policy legislation. Historically any taskforce BOEM has been a part of has avoided FACA (Federal Advisory Committee Act) like the plague. In Washington, FACA **MUST** be triggered to allow those most affected by federal/state actions to be directly at the table as members of the committee in order to meet the legislative standards in setting up the WCMAC that placed everyone at the table as equal partners in the collaboration process.



Even though SB 5213 failed to pass for lack of directly involving coastal citizens and fishing interests directly at the table the legislative intent clearly stated in Section 7 to increase “**LOCAL**” review the state/NOAA CZM certifications, and I quote legislative intent in Section 7 (1) b, “Therefore, it is the intent of this section to direct a review of the state’s existing program and the submission of additional state and **local** government policies to the National Oceanic and Atmospheric Administration for inclusion in such a program and to direct that maximum state efforts be directed toward implementing the state’s role in federal consistency actions affecting the states coastal zone.” Quotes like this unequivocally and clearly lay out legislative intent found in the underlying Coastal Marine Waters Management bills that are not adequately on display in the state RCW’s alone. SB 6350 directed that the final Washington Coastal Marine Spatial Plan be included in the state/NOAA CZM certifications and most certainly did not intend for ecology to refuse to place local authorities into the CZM certs or the Coastal Plan. In fact, the entire Coastal Marine Spatial Planning process was directed to rely exclusively on pertinent existing legislation including local authorities such as the Pacific County Shoreline Master Program that has contained an ocean management section since 1997, the only county in the state with management authority that currently supersedes existing ecology WAC’s in the coastal zone that is NOT adequately brought into this draft CMSP Plan. This needs correcting and full inclusion into the Plan before the final Plan is adopted. The state/NOAA CZM certification update should also include any other coastal SMP that is finished in the next few months as well. A number of cities and Grays Harbor county are or have included an ocean section in their most recent SMP updates that have undergone considerable public input. In Pacific County over 50 public meetings/work sessions were held in conjunction with the most recent SMP update that modified and offered additional PROTECTION to fishing in coastal marine waters over the original protective standards which are not properly included in the Washington CMSP and improperly deleted from the state/NOAA CZM certification, a deletion that flew in the face of the legislative intent of multiple legislative bills over the last decade or more. CORRECTION NECESSARY in order to carry out the intent of the legislature and positively upheld by the Washington Supreme Court. This Programmatic EIS fails to even list the Existing Coastal Shoreline Management Act local authorities like Pacific County SMP as one of the set of regulations that would be triggered for any new use development in the coastal marine waters which puts on full display their misplaced bias that excludes the County SMP’s from those required to be addressed and illicitly omitted for about a decade from the state/NOAA CZM certifications – a serious breach of ethics that must be corrected ASAP as the coastal SMP’s not only provide more protection to coastal fish/water dependent communities, they supersede agency WAC’s which are the default if the SMP’s are not effectively in place, the Pacific County SMP has had an ocean section in place since 1997 that recent update MUST become CZM certified.

**The Coalition of Coastal Fisheries represents thousands of local coastal community fishing families** that depend 100% on access to sustainable **local** coastal fish and high value fishing grounds for their families’ wellbeing and coastal businesses, and communities’ economic sustenance that contributes to the overall wellbeing and economic health of the state and the nation.

**By reference** CCF/CRCFA includes all the multitude of presentations/correspondence, FOIA requests, and verbal communications and meeting interactions relevant to coastal issues affecting fishing in anyway and this Washington Coastal Marine Spatial Plan delivered including but not limited to the WCMAC/SOC, State and Federal agencies, Counties, SMP, LCSG, legislature, and congress over the course of the process leading up to and including this draft Washington Coastal Marine Spatial Plan dating back at least a decade or more that could have any bearing on the future of fishing resulting from execution of this Plan or Plan impacts now or in the future including the required CZM actions. This by reference is meant to be a broad brush of inclusiveness for the administrative record of the Washington CMSP process required to address reasonably foreseeable possible adverse impacts associated in any way with this or associated actions that may or may not be explicitly mentioned in this letter including effects of any actions to be taken in the future to adversely impact fishing.



All lists in this letter are meant to be all inclusive as well and not limited to just those specific items listed to ensure that this correspondence is excessively pigeonholed to these exclusive lists that we ran into time and again at the WCMAC meetings, especially surrounding the nomination of liaisons and particularly the past Grays Harbor PUD manager Rick Lovely that the agencies and some went to EXTREME and illicit lengths to exclude his expertise in the “coastal” renewable energy field that may have conflicted with some agencies ideology and shed necessary light on the subject in relationship to the Plan. Mr. Lovely’s exclusion for WCMAC discussions obviously slanted the discussions to over exuberance for ocean energy that has been totally unwarranted and especially slanted in the presentation of ocean energy that was by legislation supposed to map areas for ocean energy that avoided impacts to fishing. **Corrective energy maps mandatory** to meet the express intent of the legislation so as not confuse or mislead the public and the legislature in the future.

CCF/CRCFA succinct opening comments:

Washington CMSP draft does not emphasize or accurately reflect the intent of the legislature’s ORMA CMSP legislation that new use MUST avoid adverse impacts to fishing. This first public draft of CMSP overly reflects agency HOPE of installing new use in the ocean, does not adequately present reality of realistic potential area consumed by new use, ignores exorbitant cost/benefit lacking the public interest, placement of ocean energy, misplaces and under represents the legislative intent not only in the Washington CMSP legislation but also other coastal management legislation of the last decade or more:

**PROTECT AND PRESERVE EXISTING USES INCLUDING FISHING**, in marine waters of the coastal counties, Pacific, Grays Harbor, Jefferson, Clallam - deficient. The Fishing Protective Standards focus primarily on minimize adverse impacts, not AVOID CONFLICT as intended by the legislature. Senator Ranker, one of the prime sponsors of the Washington CMSP even attended one of the initial meetings of the original Coastal Marine Advisory Council meetings that was formed under ecology with the express message to Avoid Conflict – history and intent of the legislation matters and was emphasized by the Washington Supreme Court in their recent ORMA decision.

**AVOID CONFLICT** - existing use maps do not clearly portray areas to avoid for new use, particularly high value fishing areas as intended by the legislature. Energy maps are located in high value fishing areas, erroneously and do not portray the legislative intent to locate ocean energy in areas of MINIMAL ADVERSE IMPACT to existing uses including Fishing which may exist only outside of 125 fathoms in select areas of minimal existing use. **CORRECTIVE ACTION REQUIRED.**

**MINIMAL CONFLICT/Adverse Impact** areas with existing use is not portrayed adequately and in fact downplayed in the draft CMSP and does not adequately addresses the legislature’s intended outcome of CMSP to Avoid Conflict.

**MINIMIZE ADVERSE IMPACTS** is over emphasized in the Fisheries Protective Standards that means a new use is permitted even though it may not Avoid Conflict or produce only Minimal Adverse Impact to fishing, and does not lead to any possibility of outright prohibition of a new use that potentially produces harmful impacts to fishing emphasized the under recent and only ORMA Supreme Court Decision.

**WRONG OCEAN ENERGY MAP:** The ocean energy placement in High Value Fishing Grounds flies in the face of the legislative intent to Avoid Conflict, and only produce Minimal Adverse Impact on Fishing. The intent of the legislature was to locate energy and other new uses in minimal impact areas, to protect and preserve existing use as the highest value in the CMSP mapping process in order to locate new use to be able to coexist in coastal waters without HARM to fishing. **CORRECTION NECESSARY**; the Marxan map of ocean energy potential location that has only MINIMAL ADVERSE IMPACT on fishing and other existing uses does NOT exist inside of 125 fathoms and needs to be the primary ocean energy map, not the existing map that is the best place for



ocean energy location, but the one that does the very least HARM to existing uses including fishing as intended by the legislature. When the concept of Coastal Marine Spatial Planning was originally conceived at the legislature NO ONE knew just how highly used the coastal zone really was. Originally the untrained eye looking from shore saw what was perceived as vast stretches of the coastal zone readily adaptable to new use. Putting the multiple uses to MAPS has drastically changed that first blush view of the Coastal Zone to one of a very busy place with multiple overlapping existing uses making it quite difficult to even find a single place for new use expansion of even minimal extent to conditionally allow MINIMAL adverse impacts. The FACT that the Marxan mapping did not account for the value of an area to coastal community economic stability and viability with the Map presentations representing every use in the coastal marine waters being equal is an **automatic devaluation** of the most important coastal uses (fishing) that the legislature intended to protect and preserve. The legislature also understood that 70% of the Washington coast north of Pt. Chehalis was highly unlikely to house any significant ocean energy or other new use facility and that the Rafeedie Decision produced a tremendous amount of fishing effort shift to the 38 miles of coast south of Westport and that, that area was highly significant to supporting the coastal fish/water coastal economy. The Marxan mapping of ocean energy does not capture the intent of the legislation for new use including ocean energy to be located in areas of the coast that AVOIDS CONFLICT and only produces MINIMAL ADVERSE IMPACT on fishing and other existing uses in order to PROTECT AND PRESERVE FISHING, and the stability and economic viability of the coastal fish/water dependent communities in the four Pacific coastal counties that were specific and unique for ADDED PROTECTION in the state ORMA legislation as intended. In the maps there are about fourteen different uses indicated on the Marxan Maps but there is NO clarification of what those 14 individual uses are or how they relate directly or indirectly to the four coastal counties wellbeing the legislature offered special attention for protection and preservation. These individual uses should be listed and their relevancy to the Stability and economic Viability of the four coastal counties reliance upon them for their economic success. Obviously, the Dungeness crab fishery for example looms much larger in its coastal economic contribution than to walk the dog on the beach to the coastal wellbeing.

Fishing was denied the opportunity to designate areas of high value to fishing during the Washington CMSP process even though the WCMAC authorized Sea Grant to do just that and sent packing by Command/Control edict by a single entity, WDFW without consult to the WCMAC that authorized the fishery mapping. Contrary, ocean energy received preferential mapping in high value fishing areas which was not the legislative intent. This was contrary to legislative intent listed above where new use was to be mapped in areas of MINIMAL CONFLICT and MINIMAL ADVERSE IMPACT areas which has not been done potentially slanting the table toward initiating ocean energy in high value fishing areas and certainly sends the WRONG message to the public as to where the legislature intended to locate new use in coastal marine waters. **Correction necessary.**

The energy maps in the Plan certainly will lend to misinterpretations as to where energy is best located offshore Washington to AVOID CONFLICT and produce only MINIMAL ADVERSE IMPACTS to FISHING in the future and lead to protracted and unnecessary legal battles similar to those being encountered on the east coast when an entity applies for an ocean energy or other new use lease from BOEM in federal waters sometime in the future which could be 25 or 30 years or more from the production of this Washington Plan.

The Washington Coastal Marine Spatial draft Plan needs a serious redraft to far better and directly reflect the legislative intent which is identified in many lines throughout the three legislations; 6350, 6263, and 5603 which contains many tools to ensure fishing is adequately protect and preserved which are not clearly self-evident in the Plan. The Plan is never identified as UNIQUE in the nation, designed to protect and preserve existing use including fishing from disruption and displacement by new use in coastal marine waters as its PRIMARY OUTCOME. It should also be made clear that ORMA was specifically intended by the legislature to provide **special protection** for the four coastal counties' marine waters not offered in other areas of the state, Pacific, Grays Harbor, Jefferson, and Clallam Pacific marine waters. The Plan also neglects the Washington Supreme



Court 12 January Unanimous Decision that instructs agencies that certain adverse impacts by new use can be outright PROHIBITED and that ORMA was designed to PREEMPTIVELY STOP more than MINIMAL ADVERSE IMPACTS to existing coastal uses, including fishing. ORMA, especially the last 3 legislative additions in 2010, 2012, and 2013 were specific to Avoid Conflict, allow only MINIMAL ADVERSE IMPACTS, as opposed to the original 1989 ORMA legislation that called out “Significant” adverse impacts to coastal uses; a much higher standard of protection for fisheries is now in effect than in the original 1989 version of ORMA. In the last three additions to ORMA the legislature recognized the huge intolerable impact on fishing of the Rafeedie Decision and the legislature took several steps to ensure no additional damage occurred to the coastal fishing communities by placing some pretty serious protections in place that go well beyond minimize impact to fishing, in fact as mentioned numerous time before: 1. Avoid Conflict with fishing, 2. Allow only MINIMAL impacts to fishing, a huge increase in protection from the 1989 Significant adverse impact standard, and 3. make new use conditional to the Avoid Conflict and only minimal adverse impact to fishing allowed to occur and the Supreme Court added the fact that if Conflict and Adverse Impacts that the fishing fleet has shown are reasonably foreseeable, especially to next generation high debt fishermen then the fishery protective standard is to PROHIBIT the new use from occurring, especially in high value fishing areas that the coastal fish dependent communities depend upon for their economic stability and viability. Currently the Fishery Protective Standards are too subjective and not clear enough to honestly protect the fisheries from serious HARM that is reasonably foreseeable depending on the location of the new use in the area of crab gear movement that is UNIQUE in the nation with the Highest Mass Weather Index in the nation outside of Alaska exceeding 130 on a relative scale with San Diego a 10. NEPA/SEPA Process alone fails to stop new projects 95% of the time. There is strong reasons why fixed gear inside of the crab gear movement zone should be OUTRIGHT PROHIBITED inside 45 fathoms as the primary Fisheries Protective Standard. The responsible action on the **Marxan maps must have the 45 fathom curve etched into each map** to better delineate where maximum protection is enforced by the Fishery Protective Standards.

**Ocean Energy Costs:** the public has the right to know the probable dollar impact to them; who is going to have to pay and how much. Ocean energy is insanely expensive, and the public has a right to know before they receive the excessive bill that has far cheaper alternatives on land not adequately addressed in this Plan. Rhode Island Block Island wind turbine complex cost approximately \$150,000/household served. Principle Power Coos Bay wind turbine complex would have cost approximately \$225,000/household served. These types of costs are not in the public’s best interest and the public and the legislature has a RIGHT to KNOW up front before a significant amount of time, energy, and public dollars are spent on projects destined to fail for lack of an **affordable Power Purchase Agreement; the ultimate failure point** in the Principle Power project at Coos Bay. This draft Plan has neglected this type of very important information that the public and the legislature needs to know to make informed decisions relative to future public investments in offshore vs. land based renewable energy which is cheaper by at least an order of magnitude. CCF requested this information be made available and presented the Tacoma Power and Light analysis of the Tacoma Narrows Current Turbine Analysis as an example of what information could have and should have been developed during the Washington CMSP process so a better understanding of the very high costs could have been readily available to anyone reviewing the Washington CMSP and EIS. The current turbine project analysis was determined to be uneconomical with negative cost/benefits requiring HUGE public subsidies from the taxpayer and ratepayer to even be built let alone maintained. This information and request was totally ignored, no suppressed by the SOC. The dollars allocated by the legislature was instead spent on a surf smelt survey (cost approximately \$500,000) that produced totally irrelevant information to making informed decisions relative to placing any new use in the Washington Coastal Marine Planning area that will never be used in any way to inform the location of any new use on the Washington coast. In two years of sampling the beaches of the coast, not one surf smelt egg was detected south of Pt. Grenville area to the Columbia River, where new use could be expected to be located, if at all. Any review of existing WDFW surf smelt required grain size of the sediments on the Washington coast would have exposed the outcome



fully predictable outcome without spending the half million dollars which should have been spent on acquiring new economic data similar to the Gunnar Knapp Bristol Bay Economic Salmon Study that CCF requested to better describe coastal economic production well beyond existing data that fell far short of the real value of the coastal fisheries to the local coastal communities, state and nation.

**Ocean Energy Area Consumption:** Prohibitively area consumptive: Oregon examples: OPT power buoys 2400 square miles – Principle Power floating wind turbines 520 square miles, compared to Pacific County land mass of 939 square miles or the area south of Westport and out 15 miles at 570 square miles – both preposterous area consumed for minimal energy to equal just 1 Bonneville Dam yearly energy output potential. **The public and the legislature has a right to know before these preposterously expensive proposals are off the drawing boards at ratepayer and taxpayer expense.** The Principle Power 30 MG proposed facility failed even after receiving a \$51 million grant from the federal government, failed for lack of a viable Power Purchase Agreement and NO reasonable method of ever paying for the extravagant high cost/low energy benefit project during its expected lifetime.

ORMA CMSP legislation was put forward to STOP exclusive consumption of marine waters by new use that had more than minimal adverse impacts to fishing. This fact was specifically called out by the ecology attorney at the October 2016 hearing at the Supreme Court review of the Grays Harbor Crude by Rail Terminal expansion who stated correctly that ORMA was designed to STOP projects; he got it RIGHT. The legislation does distinctly allow projects that potentially have adverse impacts to existing uses to be prohibited as called out in the Supreme Court Decision and not reflected in the Plan. Minimize impacts seems to be the overriding emphasis to the draft Plan; **Avoid Conflict and Minimal Impacts are shortchanged in the draft Plan.** There are NO thresholds established that would lead directly to Prohibition of a new use. The entire outcome of initiating a new project is left totally to discretion of agencies process which in the ORMA Grays Harbor Oil Terminal case were clearly deficient and ORMA was ignored, no, in fact suppressed by ecology.

These succinct comments were discussed with prime legislative sponsors of the CMSP legislation during this open public comment period for accuracy before sending in these comments. **Please note: Washington Supreme Court on 12 January 2017 directed ecology to ascertain the legislative intent of the ORMA legislation and carry out the intent of the legislature.** Listed above in the succinct comments is the SOC underlying responsibility. **This draft CMSP does not clearly carry out the legislative intent or the Supreme Court precedent setting case directives relative to ORMA.** This Washington CMSP and EIS needs some serious revision to fulfill the legislative intent to Protect and Preserve Fishing, Map existing use, establish “if” there is a viable NO Conflict zone available for new use like but not limited to, ocean energy, nearshore disposal sites, or other new use in some area offshore the Washington coast that has only MINIMAL ADVERSE IMPACT on fishing that AVOIDS HIGH VALUE FISHING GROUNDS and unique ecological areas. The SOC does not exercise due diligence in its duty to fulfill the legislative intent by eliminating local Shoreline Master Programs in the State/NOAA CZM Certifications. The legislature gave specific instructions that new regulations were not to be created in the Washington Coastal Marine Spatial Plan but that existing legislation was to be utilized, not selectively omitted as is currently being done in the CZM certifications. The exception to no new legislation was the fact that the legislature mandated Shoreline Master Programs be updated and the counties and cities on the coast in the 4 county area have either updated or are in the process of updating and including ocean sections in their SMP’s that must be included not only in the Plan but also the CZM state/NOAA CZM certifications when they become available. The current rush of the USACE is an illegitimate attempt to skirt this process since they also ensured no new scientific information in the summer of 2017 for failure to transfer funding from the USACE to NOAA so that any information could be collected at the North Head Site – intentional omission to delay to get a new start request is questionable skirting of the law and should be withheld until the science is complete and informed decisions can be made to move forward or not..



The basic problem is that if Washington CMSP does not correctly interpret the legislation and fails to correctly identify valuable fishing areas to avoid conflict the outcomes will be inconclusive and difficult to discern in this draft report. Washington CMSP is UNIQUE in the nation. Washington has the only CMSP in the nation legislated to specifically protect and preserve existing use, fishing. All other CMSP legislation from Rhode Island to Oregon was enacted to install new use in marine waters through tradeoffs. Washington's was not, it was to protect fishing, and allow new use that did not conflict with fishing. This draft does not adequately fulfill that legislative intent with any degree of clarity to ensure that the intent is met in the future, which may be for 20 or 30 years in the future when no one is left to clarify the intent of the legislation. The Washington Plan must be clarified to reflect the legislative intent.

Washington CMSP draft does not emphasize in fact inaccurately reflects the intent of the legislature's most recent ORMA CMSP legislation to Protect and Preserve Fishing, **Avoid Conflict** with Fishing, and only conditionally allow new use that has **MINIMAL ADVERSE IMPACT** on Fishing: New use in coastal waters between 0 - 200 miles offshore is a **CONDITIONAL USE** that **MUST** meet these very significant and stringent ORMA requirements **NOT** the historical way to make projects happen by simple recommending ways to avoid and minimize significant adverse impacts and then applying mitigation that is never adequate to replace the losses known to occur. Newer ORMA legislation has much higher protective standards than historically that allowed projects to happen 95% of the time by applying conditioned ineffective mitigation that over 60% of the time never was enforced to be completed and **HARM** marched on unabated. The new standards are in place to **AVOID HARM** in the first place by requiring **NO NET LOSS** of ecological function. **CORRECTIVE ACTION REQUIRED.**

**Practical application of ecosystem management** almost always neglects the human element and that new use will have the potential for extra significant, far beyond minimal adverse impact disruption and displacement of fishing that already has cumulative adverse impacts of lost fishing grounds that is the largest in the nation outside of the Western Pacific territories marine reserved where fishing is prohibited. The typical BOEM energy lease in US coastal waters almost, without exception is wherever the energy company requests it to be and of a size larger than requested. By not addressing specific area and size of the potential lease the project will cause undue harm and undoubtedly end up in valuable fishing grounds with significant adverse impacts. The Plan and EIS fails to locate any area whatsoever that could produce minimal adverse impact to fishing within the Plan which has been almost completely devalued to the stability and viability of the coastal communities through the Marxan mapping method that has placed equal value to all offshore uses – again valuing the crab fishery equal to walking the dog on the beach even when the Plan recognizes SW Washington as housing the 4<sup>th</sup> most fish dependent community in the nation.

**Significant** has taken on more specific meaning in recent court cases. The coal terminal case in Whatcom County valued significant adverse impact as a loss of 5 – 7% or less. This measure of significance did not however factor in any associated cumulative loss to the fisheries from existing adverse impacts. **At some point in cumulative impacts additional adverse impacts cross a threshold where the new use MUST be told NO! CCF strongly believes that Significant Adverse Cumulative Impact threshold exists offshore Washington where the Adverse Impact of the Rafeedie Decision has already issued a cumulative impact of a full loss of 50% of fishing revenues on a very significant 70% of the coast of Washington that is already occurring and not found in any other state in the nation.** The Marxan mapping even though flawed provides some measure of significance that can be measured. Not all fishing ground is created equal, some areas are of much higher value to fishing than others depending on community dependency that is not properly presented in the Marxan maps. Some valuable fishing areas produce a magnitude or more per square mile than others ranging down toward zero community dependency use to fishing, depending on the specific fishery. Example: in recent years according to WDFW data the coast can be divided into four basic regions for the crab fishery moving down by one third at



each division according to the use that the area received based on effort, only one measure of community dependency:

- |   |                              |           |
|---|------------------------------|-----------|
| 1. Oregon border to Klipsan Beach       | 2300 pots/mile + Oregon pots | 13 miles  |
| 2. Klipsan Beach to Pt. Chehalis        | 1000 pots/mile               | 25 miles  |
| 3. Pt. Chehalis to Pt. Grenville        | 375 pots/mile + tribal pots  | ?25 miles |
| 4. Pt. Grenville to the Canadian border | 75 pots/mile + tribal pots   | ?77 miles |

85% of the crab production of the Washington crab fleet is from the 38 miles south of Pt. Chehalis and only 15% is produced from 102 miles of the north coast due to the adverse impacts and huge fishing effort transfer as a result of the fleet reacting to loss of high value fishing grounds in tribal U & A's slicing the fish pie much thinner for the individual family fisherman south of Westport where the fishing grounds north of Westport have lost 50% of the harvestable fish – SIGNIFICANT ADVERSE IMPACT already exist to fishing on the Washington coast found NOWHERE else in the nation – SIGNIFICANT VERY VERY SIGNIFICANT loss of area before any additional loss of fishing grounds occurs. In some years when the state crab season is split at Klipsan Beach by area and date like will be the case in the 2017/18 season 50% or more of the Washington crab fleet will fish in just 13 miles of coast south of Klipsan Beach increasing the insane pressure for the fleet to fish in weather that is getting all too often imprudent and significantly raising the potential for additional fishing fatalities to occur as the fleet competes for the available crab. The FISH or GO HUNGARY pressure is exceeding prudent limits of the small vessel fleet to INSANE levels that is not part of the Marxan mapping exercise, in fact no way to put value on the pressure assumed by individual fishermen and their individual financial pressure to produce over 50% of their income for the year in just 7 – 12 days of fishing at the start of the crab season in a very dangerous mid-winter crab fishery with external pressures and cumulative impacts that have pushed the highest fatality rate into Dungeness crab of any occupation in the nation at 468/100,000.

**How does anyone in all honestly overlook and refuse to evaluate that existing highly significant cumulative adverse impacts to the crab fleet to warrant any more adverse impact to occur at all to the condensed crab fishery on the Washington coast that is not measured in economic viability or stability but by the highest fatality rate of any occupation in the nation – the HEIGHT OF SIGNIFICANCE measured in fatalities already forced on the fishery by loss of fish access resulting from the federal obligations to treaty tribes and the Rafeedie Decision that has produced the WORST POSSIBLE UNINTENDED CONSEQUENCE IMAGINABLE – EXTREMELY HIGH FATALITIES. The implementation of the Washington Coastal Marine Spatial Plan MUST ensure that there is ZERO TAKE OF FISHERMEN as a result of this Plan or the rest does not matter.**

**SIGNIFICANT EXISTING ADVERSE IMPACTS ARE ALREADY DEADLY  
ANY ADDITIONAL ADVERSE IMPACTS TO THE CRAB FLEET WOULD  
BE INHUMANE BEYOND INSANITY**

**VALUE IS CURRENTLY MEASURE BY FATALITY RATE**

**THE WORST POSSIBLE DEMOGRAPHIC MEASURE OF COASTAL  
WELLBEING**

**ANY ADDITIONAL LOSS OF FISHING GROUNDS WOULD BE**

**HEARTLESS AND CRUEL**





**DEVASTATING TO FISH DEPENDENT FAMILIES  
AND STRIKE AT THE HEART OF FISH DEPENDENT COMMUNITIES  
SUFFERING FROM EXISTING DEADLY CUMULATIVE IMPACTS  
ALREADY**

**THE LEGISLATURE UNDERSTOOD THIS SITUATION WHEN  
**AVOID IMPACTS** WAS PLACED IN RECENT ORMA LAW  
DEATH OF THE FAMILY BREADWINNER IS NOT ABLE TO BE  
MITIGATED**

**CORRECTIVE ACTION NECESSARY IN THIS CMSP  
PROTECT AND PRESERVE**

**NO ADDITIONAL PRESSURE  
NO ADDITIONAL LOST FISHING GROUNDS  
TO**

**FISH OR GO HUNGRY = INCREASED FATALITY  
REASONABLY FORESEEABLE EFFECT**

**Cumulative adverse impacts matter**, existing loss of access to fish has already crossed the **HIGHLY SIGNIFICANT IMPACT THRESHOLD** on the Washington coast. Continually resetting the impact threshold and ignoring the wellbeing of the coastal communities is simply **WRONG!** This draft Plan and EIS misses, no totally ignores this most important metric and places the outcome of a misplaced evaluation process into action potentially increasing coastal fish dependent community devastation and increased fatality rates. Additional pressure on the insanity already in the dangerous crab fishery is totally unwarranted and contrary to the legislative intent of the ORMA legislation. The legislature got it **RIGHT** when they included **AVOID CONFLICT** with existing uses, this CMSP draft team got it **WRONG** when they over focus on process and fail to honestly examine the **BIG PICTURE** of community need – **NO MORE INDUCED INCREASE IN FATALITY RATE BY ALLOWING REMOVAL OF ANY ADDITIONAL FISHING GROUNDS FROM PRODUCTION INCREASING THE EXISTING INSANITY TO FISH OR GO HUNGARY IS WARRENTED UNDER ANY MEASURE. CONTINUING TO IGNORE THE POTENTIAL TO INCREASE FATALITIES WHICH HAVE BEEN AT THE HIGHEST RATE OF ANY OCCUPATION IN THE NATION IS GROSS NEGLIGENCE AND DELELICTION OF BASIC GOVERNMENT RESPONSIBILITY TO KEEP THE CITIZENS SAFE, ESPECIALLY WHEN THE FATALITY STATISTICS SPEAK SO PROFOUNDLY, AND THE REASON IS**



EASILY IDENTIFIED AS CONTINUAL LOSS OF ACCESS TO FISH ACROSS THE BORAD, NOT JUST IN DUNGENESS CRAB. The wild salmon policy being pushed to WFWC is also culpable to this insensitivity to this horrendous outcome of continually squeezing the lifeblood out of our state fisheries reflected in fatalities.

Valuing fishing grounds can be done in many ways and it is a year to year event as the highest value crab grounds are quite different from year to year making the determination of significance more challenging. The number of pots/mile above is an average of 3 years of pot data. Strictly using crab landings by pot masks this dramatic difference in where the crab were caught and the value of the grounds to the fishing industry. The landings from the Klipsan south area are divided into multiple ports of landing including as far north as Westport which has a considerable impact on the southern Washington ports similar to the loss of crab to the area north of Westport to the tribes so evaluating the value of the significance south of Pt. Grenville is next to impossible, but one thing is certain, the cumulative impact to the coastal crab fleet is highly significant and the cumulative pain to the economic viability can certainly be labeled significant without any additional loss of crab access that is sure to come as a result of new use that will have an additional significant impact on the coastal fish dependent communities anywhere inside of 100 fathoms of water. If the baseline of significance is always assessed to the next action cumulative impacts will never be considered. It is obvious that this CMSP evaluation of adverse impacts to fishing is a reset to zero in this process and the horrendous loss of fishing access that has amounted to over \$160 million loss in just the crab fishery alone is totally unacceptable as it continues to drive the insanity of FISH OR GO HUNGRAY into the last honestly viable fishery on the Washington coast capable of supporting coastal fishing ports that require tonnage across the docks to maintain side channels into ports which places both commercial and recreational access to coastal waters in severe jeopardy with total destruction of the fish dependent communities at stake – reasonably foreseeable effect of any more than minimal impact that does not avoid conflict with existing fisheries, the dominos are already falling; we must find a way in this CMSP process to stop the fall of fishing on the coast which is the primary intent of the recent ORMA legislation, not forcing additional loss of fish access on the coast through a CMSP process that was utilized in other state processes that do not have the existing cumulative impacts to fishing found on the Washington coast, the only place in the nation placed under severe economic duress by loss of 50% of the harvestable fish on 70% of the Washington coast – SIGNIFICANT VERY VERY SIGNIFICANT.

Commercial and Recreational Fisheries in the United States are vital economic drivers to coastal communities' stability and vitality across the nation. SW Washington houses the 4<sup>th</sup> most fish dependent community and the 10<sup>th</sup> most productive seafood landing port in the nation based on recent NOAA Fisheries data. This is only one of the many UNIQUE aspects of the Washington coast that makes CZMA outcomes different in Washington from any other coastal area in the nation. **Fish ACCESS MATTERS** here to fish/water dependent communities more than ANY OTHER area of the nation and has been excessively tempered by cumulative existing UNIQUE federal obligations including tribes treaties with offshore fishing rights that are only found in Northwest waters that has **major existing significant adverse cumulative impacts** on Washington coastal fishing communities where federal treaties require 50/50 sharing of all fish on 70% of the Washington coast found NO where else in the nation – REPEAT - UNIQUE situation that needs a UNIQUE quality incorporated into the Washington CMSP that makes the final outcome of Washington CMSP UNIQUE in the nation requiring the highest degree of PROTECTION of state fisheries in the nation which is not adequately evident in this draft. This tribal treaty requirement adds a **tremendous existing cumulative SIGNIFICANT adverse effect** when added with the fact that 60% of the Washington coast is in the Olympic National Marine Sanctuary (no BOEM energy leases in the OCS within sanctuary boundaries), causing fishing to collide with excessive potential CONFLICT with new energy or other new uses condensed to only the southern 38 miles of the Washington coast. This extreme condensation of potential CONFLICT is not adequately highlighted in the CMSP document or associated EIS. The Washington Coastal Marine Spatial Planning legislation was enacted 1<sup>st</sup> in 2010 for the primary purpose to first and foremost to **“Protect and Preserve Existing Sustainable Uses including fishing”** as a 1<sup>st</sup> priority and

new use in coastal waters was to AVOID CONFLICT with existing uses, particularly high value fishing areas with clear language and intent in the CMSP legislation. This legislative mandate is real murky in the draft Washington CMSP document and certainly not clear enough for potential new use applicants to understand the very high bar set by the legislature to **AVOID CONFLICT** with only “**minimal adverse impact**” to existing use and that it was the new use responsibility to AVOID CONFLICT. The most recent ORMA/CMSP legislation set a much higher bar of for fisheries protection, **MINIMAL IMPACT** compared to the original 1989 ORMA oil spill legislation that required a “significant” adverse impact to trigger protections for the fisheries. The more recent Costco Busan oil spill in San Francisco Bay has had numerous scientific studies associated with the effects of oil spill on coastal natural resources that have shown multiples of NO herring spawning in any area affected by the oil spill. The research also shows extreme birth defects in juvenile herring associated with spills. The Washington Coastal Marine Spatial Plan ignores public input throughout the CMSP process that identified the fact that oil spills have negative adverse impacts to fish dependent communities and that the Plan MUST include all possible avenues of oil spill prevent which is missing in the Plan. During the Plan process CCF listed a number of scientific studies showing the deleterious impacts to fish and especially salmon one of the historical mainstays of the coastal fish dependent communities. Fishing, the public and the environment will pay the price of an oil spill for far too long and is just one more reasonably foreseeable cumulative adverse impact that the coastal communities will be forced to endure. The Plan needs to address situation now, not after the fact of an oil/chemical spill that degrades the natural environment and negatively impacts the coastal peoples’ wellbeing. The legislature intended to get an oil spill study of the Columbia River to decrease any spill potential from foreseeable impacts of billions of additional gallons of crude oil crossing the bar. The study punted and did not address any method of reducing the spill potential at the most critical juncture where the mighty Columbia collides and amplifies the waves dramatically increasing the potential for a spill significantly. The Fisheries Protective Standards in the Plan MUST include active escort tugs now to improve the prevention of an oil spill at the Mouth of the Columbia River which can easily be emphasized by the Millicoma oil barge hitting North Head in recent history through the parting of a tow cable; a potential defect in the plan that does not even mention a parted tow cable as a concern. Always delaying positive actions that are known to reduce a catastrophic spill is simply irresponsible, spill prevention must become a serious Fisheries Protective Standard that allows existing use, fishing to continue unimpeded as the legislature intended. This is one area that the Plan cannot prohibit oil transport on the Columbia since the river is a shared river with Oregon and Oregon does not prohibit crude from transiting the river; however every drop of oil that transits the MCR crosses 100% in Washington waters and should become susceptible to increased prevention strategies that should be a part of the Plan.

**The Rafeedie Decision** relative to tribal treaties has caused SIGNIFICANT ADVERSE and CUMULATIVE IMPACTS to fishing on the Washington coast especially realized in the Dungeness Crab Fishery that is NOT adequately addressed and emphasized in the draft Plan that makes the Washington coastal fishery UNIQUE in the nation where additional protections for the fisheries MUST be afforded in order to meet the legislative intent to Protect and Preserve the fishery:

1. Substantial loss of crab season on 91% of the Washington coast for state licensed fishermen, 45 to 50 days and up to 85 days north of Destruction Island for the significant portion of the fleet that fish south of the Klipsan Line that opens with the rest of the California and Oregon coasts under Tristate fisheries agreement protocols. Extremely Significant Loss to the crab fishery.
2. Loss of High Value Fishing area to tribal Special Management Areas exceeding over 550 square miles, Extremely Significant Loss to the crab fishery.
3. Loss of Income exceeding \$160 million dramatically increases the next generation of crab fisherman’s failure rate affecting all fisheries in Washington disproportionately compared to any other state in the nation, Extremely Significant Loss to the crab fishery.

4. These UNIQUE NEGATIVE Washington crab fishery restrictions found in NO other state in the nation have caused an excessive number of crab permit holders (approximately 10% of the active crab fleet) to HOCK their right to fish state crab permits to fish processors causing them to become indentured servants and no longer in control of their ability to fish any longer. Significant loss of wellbeing. Extremely Significant Loss to the crab fishery.
5. These UNIQUE restrictions have resulted in the **Highest Fatality Rate** of any occupation in the nation in the Dungeness crab fishery at 468/100,000. Any additional loss of additional ACCESS to FISH on the Washington coast will only lead to additional fatalities further impacting **Dismal Demographics** in the coast that are already the worst in the state that have been dramatically affected by loss of fish access greatly reducing the wellbeing of the coastal people. Extremely Significant Loss to the crab fishery.

**Deplorable Demographics** of coastal counties are directly proportional to loss of ACCESS to FISH in these coastal fish dependent communities, much of it directly attributable to inhumane salmon policy that forgets that Coastal People Matter too, especially the forgotten and forsaken coastal fish dependent people, resulting in:

- Highest unemployment rates in the state
- Highest poverty rates in the state
- Poorest Health Outcomes in the state
- Shortest Life Spans in the state – some contributed directly to fishing mortality from lost fishing grounds
- Highest Suicide Rates in the state
- Lowest median family incomes in the state
- Longest and Least 2008 Recession recovery rates in the state
- **We must do better by the people of the coast! Additional loss of ACCESS to fish will only increase these Dismal Demographics and further suppress the wellbeing and quality of life of the fish dependent coastal communities.** The legislature was aware of these demographics when the recent ORMA legislations were enacted and fully intended the outcome of the CMSP process protect and preserve fishing; avoid conflict with fishing, and Only conditionally allow new use that has minimal impact on fishing so that the fatality rate in fishing would not be exacerbated by additional loss of valuable fishing grounds which they knew to be already HIGHLY SIGNIFICANT to the wellbeing of the coast and primary reason for initiating ORMA to provide additional protection for fishing not found in the rest of the state beyond the four coastal counties of the Pacific Coast.

These deplorable Demographics reflect the delicate state of the fisheries that has been overly suppressed eliminating thousands of coastal fish dependent jobs that quite honestly have NO reasonable replacement. Fishing is on the brink of total disaster and fast reaching a **Serious Tipping Point** of total failure. The coastal fishing community is just a single protracted Domoic Acid event away from collapse with the very high debt next generation fishermen currently clawing daily to stay solvent. A major shut down for months of the crab fishery, the state's only coastal fishery capable of still supporting coastal fish dependent communities would be a major disaster for the coast as other alternatives no longer exist to replace the income necessary to drive the economic base of the four coastal communities and service the long-term debt associated with the necessary limited entry permits that are key to existing fish access. REPEAT again, this Tipping Point is exacerbated by the Rafeedie Decision adverse economic impacts that have eliminated 50% of all fish access on 70% of the Washington coast costing the crab fleet approximately \$160 million dollars and growing significantly each and every year, dollars necessary to service large debt and provide a rainy day fund for major shutdown events like Domoic Acid that is sure to come. It must be noted that this Tipping Point is a trigger to be recognized that will produce profound impacts on major ports on the Washington coastal economy. Again, federally authorized dredging of the channels into the ports is predicated on tonnage of products across the channel. This tonnage is currently supplied by COMMERCIAL FISH (50% or more by crab) as recreational opportunity is NOT a part of the formula to trigger

federal dredging funds to be expended to maintain the federal channels into the ports. If the fish tonnage decreases much further the federal dredging into our ports will be suspended and all recreational access to the coastal marine waters will also be in jeopardy forcing the coastal ports out of business and a highly significant economic loss to the coastal communities driving the current deplorable demographics through the roof of failure of the coastal communities. **Commercial Fish drive the major economic base** of these fish dependent communities and maintain the economic success or failure of the entire coastal port system. The reasonably foreseeable Failure of our coastal ports would be a serious disaster for the coastal fish dependent communities. This Washington Coastal Marine Spatial Plan neglects this significant aspect of the Port/Commercial Fish interdependency that is so vital to the stability and economic viability of the coastal water dependent communities that the legislature intended to Protect and Preserve. Limiting commercial fish tonnage across the channel equals no federal channel dredging equals no ports equals greatly depressed coastal economy equals increased deplorable coastal demographics a terrible situation the legislature intended to prevent and why the legislature made such high standards for new use on the Washington coast in these recent additions to ORMA.

Increasing commercial salmon harvest opportunity is within our reach and must be initiated ASAP to counter balance the threat of Domoic Acid shut downs that will significantly reduce commercial tonnage across the channels and cause unintended consequences that are unthinkable for the coast. Loss of access to fish, especially Dungeness crab due to improperly located fixed new use such as ocean energy or open ocean aquaculture that could easily put entire crab fishing communities in total jeopardy from loss of massive crab gear entangled irretrievably in ill placed ocean energy or other fixed structures in the coastal marine waters from storm driven crab gear movements that will place the entire coastal water dependent coastal communities at severe RISK of total failure of the next generation high debt fishing industry. This **HIGH RISK OF TOTAL FAILURE** is reaching a Tipping Point of significance to coastal commercial fish dependent communities is inadequately portrayed within this Washington Coastal Marine Spatial Plan and certainly not able to be properly portrayed in the state/NOAA CZM certifications to offer the adequate protections that the Washington legislature intended and easily detected over and over again throughout ORMA. The UNIQUE fragile nature of the coastal fisheries in Washington is not adequately portrayed in the draft Plan, especially the significant adverse impacts associated with the Rafeedie and other federal court decisions adversely impacting the fishing industry's stability and economic viability significantly in Washington that NO other state in the nation is subjected to the degree of impact found in Washington that makes the Washington coast overly vulnerable to additional adverse impacts of placing new use in valuable fishing grounds. This extreme vulnerability to fishing reaching a tipping point is not adequately addressed. Example: Commercial troll salmon landings on the Washington coast are at less than 1% of the average troll salmon deliveries in the decade of 1968 to 1977. The loss of coastal salmon JOBS is corresponding to these deplorable salmon landings of today and can be visualized in the fact that in 2016 the active troll salmon permits have plummeted from over 7000 to barely 100 over recent decades and is directly proportional to a lot of factors but closely correlated to WDFW reduced salmon hatchery mitigation production in recent years brought on by again federal actions related to a failing HSRG theory that is proving to be the undoing of all salmon fishing in the Northwest with highly significant adverse impacts to public access for commercial and recreational salmon harvest. Trawl fishing is so decimated in Washington that only 3 active vessels are delivering bottom fish into the state, a travesty brought on by multiple factors but high on that list is a growing unwarranted bias against trawl fishing driven primarily by NGO organizations that use the term "overfishing" as a cash generator for their multiple antifishing organizations. These antifishing organizations sensationalize the worst case scenarios found anywhere in the world and imply that it is happening locally even though that is not the local situation and that NO serious overfishing is occurring in local waters where sustainable fishing is the hallmark of our local fisheries led by Dungeness crab the most ecofriendly fishery in the world.

**By reference** CCF includes all the multitude of presentations delivered to the WCMAC/SOC, LCSG, legislature, and congress over the course of the process leading up to this draft Washington Coastal Marine Spatial Plan dating back at least a decade or more.

**Mass Weather Index:** Washington coastal waters also has the highest Mass Weather Index in the nation increasing area required to anchor fixed structures increasing this potential CONFLICT compared to any other state outside of Alaska. Example: Central Oregon Mass Weather Index is 80, central Washington is 110 and Neah Bay at 131, which is 64% higher than New Port, Oregon and over an order of magnitude great than San Diego at 10. This much higher index means Washington has a lot more frequent and greater severity to the storms than our neighbor to the south increasing the difficulty of any anchored structures remaining in place. This much higher weather index also translates into a much higher failure rate of any anchored structures placed in Washington offshore waters **demanding significantly more bonding security for cleanup and removal of failed facilities** that need to be bonded at a rate equal to or greater than the cost of the initial installation, at a minimum. Adequate bonding requirements to fully ameliorate failed facilities **helps incentivize smarter and cleaner operations offshore.** The recovery cost of a single wave energy buoy anchor off Reedsport, Oregon cost over \$1 million. The Oregon bonding requirement of \$250,000 to remove an entire wave energy facility for OPT was a nominal gesture of a mere \$250,000, far far short of the cost of removing a single anchor, let alone a failed industrial scale ocean energy facility. It is impractical for an LLC to pledge assets which are not fully secured by the state prior to installation of an ocean facility since the LLC can declare bankruptcy and wiggle off the financial hook for the cleanup after failure of the facility leaving the citizen taxpayers/ratepayers responsible for the huge amount of cash to cleanup, probably more than the installation of the facility in the first place. **This significant RISK of ocean energy facility failure to the public treasury must not be downplayed.** The costs are so great that the legislature would have to appropriate the precious funds that could be used building roads, financing higher education, or some other important government function that we would need to forego. Our state tax structure is totally inadequate to address such enormous cleanup costs, costs which could easily double the state budget in any given biennium. So far, the record of need for recovery of failed ocean energy devices in the ocean has been 100% of all attempts to place ocean energy devices in the ocean. Finavera recovered the only wave energy buoy ever deployed on the west coast that sank off of Newport. OPT recovered the single errant wave energy anchor off of Reedsport – two attempts at placing energy devices in the water resulted in 100% failure rate of the intended actions – pretty enlightening when the anchor could not even be put in the right location and the underwater float also filled with water and sank. This **dismal 100% failure rate** of all attempts to put energy devices in NW waters screams for CAUTION and insurance adequate to remove all manmade devices from the water at failure or abandonment. **This upfront cost of facility removal MUST be mandatory** and adequate to cover reasonably expected removal costs considering the existing 100% failure rate of the devices in NW Waters, in waters not nearly as extreme as Washington weather conditions. In water disposal of these failed energy devices must not be allowed as they will leave significant impediments to existing uses. Removal from the water is the appropriate approach to these failed facilities. Just an added note; there are two Oceanlinx devices in Australia also sank and one was later removed at government/taxpayer expense when the company went broke; one is still causing a navigation hazard left rotting where it sank. These shaky companies use the LLC process to shield assets and shift the burden of removal of failed projects to the taxpayer/ratepayer which must be accounted for upfront in any new fixed structures placed in Washington coastal waters between 0 – 200 miles from shore. Please review:

<http://www.abc.net.au/news/2017-05-17/oceanlinx-generator-stranded-as-court-proceedings-continue/8529602>

This is why adequate bonding in realistic amounts is necessary to get failed ventures out of the water. \$4 – 5 million per unit installed plus all connecting cables at a minimum is the current cost plus inflation over time.

**Washington Supreme Court Decision** issued on 12 January 2017 in review of the Washington Ocean Resource Management Act which contains the Washington Marine Spatial Planning legislation for the 1<sup>st</sup> time since ORMA



inception way back in 1989 totally upheld the CCF amicus brief challenging the lower court’s erroneous reliance on agency deference that had overstepped their authority with an attempt to rewrite the RCW’s through misinterpretation of ORMA, the premier law of the land intended to Preemptively Protect and Preserve Existing Uses of coastal marine waters including Fishing. The court in an unparalleled 9 – 0 Decision directed ecology (and this has bearing on all state agencies) to **ascertain and carry out the INTENT OF THE LEGISLATURE**; something CCF is very familiar with and not allowed to fully explain to the WCMAC/SOC during years of meetings dealing with recommendations to the State Ocean Caucus who is responsible for carrying out the legislative intent. CMSP legislation, 6350, 6263, 5603, and Budget Provision’s primary intent was to “Protect and Preserve Existing Use including Fishing and to AVOID CONFLICT with those existing uses with only **MINIMAL ADVERSE IMPACT to existing uses and essential marine ecology that the coastal communities rely upon for their economic stability and viability**. The use of “Significant” language was found in the original ORMA legislation from 1989, but the legislature realized that the coast was quite vulnerable to any additional intrusive space conflict in addition to the multiple existing cumulative adverse impacts led by those of the Rafeedie Decision and did not impose a “significant” requirement on impacts from new use, legislature directed agencies to **AVOID CONFLICT** and only allow **MINIMAL ADVERSE IMPACT** to existing uses that are to be Protected and Preserved as a first order of business making Washington CMSP LEGISLATION IS UNIQUE in the nation in that it **requires specified outcomes** not just procedural analysis found in SEPA/NEPA proceedings and the agencies responsible for drafting the Washington Coastal Marine Spatial Plan are restrained to carry out the legislation in such a manner that dictates specified legislative outcomes and that agencies’ ideology does not supersede the legislative intent and **MUST act to prevent encroachment** of new use more than MINIMAL adverse impact on reasonable and existing uses of the coastal marine waters that the four coastal counties rely upon for their economic stability and viability including NO harm to fishing. This draft Plan’s hard look is insufficient to:

**PREEMPTIVELY PROTECT AND PRESERVE FISHING**

**PREEMPTIVELY AVOID CONFLICT WITH FISHING**

**PREEMPTIVELY ONLY ALLOW MINIMAL ADVERSE IMPACT TO FISHING**

**NEW USE IS CONDITIONAL TO THESE SIGNIFICANT ORMA REQUIREMENTS**

Washington legislation governing coastal waters is UNIQUE in the nation and specifically addresses these challenges and reacted with PREEMPTIVE legislation in 2010, 2012, and 2013 to Protect and Preserve Fishing when there were 243 initial applications for ocean energy facilities in the nation and two active energy permits in Washington coastal zone. Repeat, Washington is the only state coastal marine planning process legislated expressly to **Protect and Preserve Existing Sustainable Uses including fishing, Avoid Conflict, and only ALLOW Minimal Impact to Fishing**. All other state CMSP processes were initiated to install new use, ocean energy, marine reserves, underwater self-cooling computer hubs, etc., and balance new use against existing uses, not protect and preserve existing uses including but not limited to fishing as a first priority as the Washington legislature intended and positively upheld by the recent 2017 Washington Supreme Court 9–0 unanimous Decision relative to ORMA, which out of necessity must be given the proper and complete deference the Washington legislature and the Supreme Court intended to not only cover coastal waters but the adjacent shoreline as well.

The US Congress also has given to the states additional authority under the CZMA in order to more closely align federal actions in the coastal zone, 3 – 200 miles from shore with local and state values and authorities as a mandate that in this case is lacking when CZM authorities do not adequately include and highlight the local SMP authorities into the Washington Coastal Marine Spatial Plan or the CZM state/NOAA certification as intended

and directed by the legislature and congress. This serious omission of local law (Shoreline Master Programs) in the CZM certification leaves coastal communities **EXCESSIVELY VULNERABLE** to exploitation of idealistic ventures which are not self-sustaining and require excessive ratepayer and taxpayer subsidies to even begin exclusionary activity negatively affecting coastal communities' existing use **JOB**s that the legislature intended to protect and preserve. The legislature directed the SOC (responsible agents) for drafting the Washington Coastal Marine Spatial Plan to include the Plan in the State/NOAA CZM Certifications and that the Plan must rely on exiting authorities which includes the coastal counties and cities SMP's which they have neglected for over a decade, a neglect that can no longer be persecuted, by omission. Pacific County has put ecology on official notice that this SMP omission from the CZM is not acceptable and **MUST** be corrected (letter from Pacific County included at the end that clearly identifies the intent of the county to ensure that the county's fishing protective SMP is to be included in the CZM certifications as intended by both the legislature and congress and not relegated to the "will consult" or "ignore" as is currently the intolerable situation.

This draft CMSP and EIS need to be looked at from the **BIG PICTURE** and not in isolation in order to carry out the Legislative Intent of the **SIGNIFICANT PROTECTION** for existing uses including fishing. CCF/CRCFA will continually bring up **LEGISLATIVE INTENT, LEGISLATIVE INTENT**, until the intent is fully incorporated successfully in the final draft of the Coastal Marine Spatial Plan, the programmatic EIS, and local authorities into the state/NOAA CZM program successfully to provide the protections the legislature and congress intended to protect coastal existing uses, **FISHING**, and the marine environment as **INTENDED** and fully upheld by the recent Washington Supreme Court Decision.

The DNR official in August of 2016 was so over confident of the deference that the SOC was illicitly exercising that did not properly reflect the intent of the legislature that he was so brazen as to say, "We'll let the courts decide." This overt, brazen display of failure to accurately understand and carry out the Washington CMSP legislative intent encouraged CCF to look for ways to get to court ASAP to see how the courts would interpret ORMA. Court action readymade, for interpreting ORMA and legislative intent, the Grays Harbor Crude by Rail Expansion. CCF worked through attorneys that are now a part of the new BD Diamond environmental attorney group of Seattle and wrote an amicus brief in support of the Quinault tribe based primarily on the ORMA RCW's and not the ecology WAC's that may have overplayed their hand in interpreting the RCW's into WAC's. The Supreme Court more than agreed with the CCF interpretation of the RCW's they reversed the course of lower court rulings by pointing out that agencies had overstepped their deference by misinterpreting RCW's in their WAC's which effectively changed the outcome of the case. The Washington Supreme Court not only rendered a reversal of lower court actions, the **decision was unanimous 9 – 0 Decision by the Washington Supreme Court**, reflecting the proper intent of the legislature and fully supported CCF interpretation of the legislative intent. That decision of intent was nothing more than the reflection of CCF intent in the legislation which CCF helped the legislature to write even before being introduced into legislative committee for its first hearing of 6350. Initially when Senator Ranker brought his ideas of CMSP forward he knew in order for CMSP to move forward in the Washington legislative the support of the coast would be necessary. Coastal legislators and CCF members met in Aberdeen to discuss concepts to include in Washington CMSP legislation. **NO** one outright opposed new use of the Washington coastal marine waters including fishing as long as **AVOID** adverse impact to fishing was the driving force in the legislation. **NO** one knew how extensive the existing use was in the coastal waters. **NO** one understood how large new uses, Ocean Energy, had to be to become economical. **NO** one fully understood the coastal dependency on coastal fish/water. **NO one on the coast or the legislature wanted new use to displace or disrupt existing fish/water dependent communities.** Every one of the original drafters of



Washington CMSP wanted more information to make better informed decisions that would “PROTECT AND PRESERVE EXISTING USES and especially FISHING coastal communities relied upon. The legislature and CCF wanted to allow new use that AVOIDED CONFLICT and AVOIDED HARM to existing uses from 0 to 200 miles offshore “if” HARM to coastal fish dependent communities could be AVOIDED. Everyone, including Senator Ranker, was willing to put coastal fish dependent communities first and initiate new use “if” we could to enhance JOB opportunity on the coast “if” possible, not allow any of the existing coastal JOB situation to deteriorate. The legislature understood the deplorable demographics of the coast., the entire legislature understood that JOBS were the key to either helping or destroying the coastal wellbeing. **Avoid Conflict; Avoid Harm to existing uses, FISHING, and the marine ecology were the two leading factors driving the Washington Coastal Marine Spatial Plan;** adding new use was a bonus “if” the first two parameters to avoid Conflict and Harm could be achieved. The mapping of the potential ocean energy areas incorrectly interprets the intent of the legislature for the CMSP process to locate new use in minimal impact areas that avoid conflict to existing use and particularly high value fishing areas must be remapped to carry out the legislative intent to AVOID CONFLICT and HARM to coastal fisheries.

Washington is the only state in the nation to put the coastal people’s wellbeing first in their Coastal Marine Spatial Plan. This coastal people’s wellbeing first included a very broad coalition of people from all over the state.

The process of producing a Washington Coastal Marine Spatial Plan compatible with the legislative intent was unnecessarily slanted to the WRONG interpretation of the intent from day one. The process spent way too much time attempting to follow other state CMSP planning processes to install ocean energy or other new use and not enough process attempting to look objectively at getting to the bottom line and BIG PICTURE of the legislative intent of coastal JOBS preservation and only permit new use that supplemented those existing uses without negatively impacting existing uses that the coastal communities need to maintain the fish dependent JOBS; this intent included the entire coastal marine waters including the entire exclusive economic zone, 0 – 200 miles from shore which is very clear in the ORMA legislation.

Washington CMSP process failed to produce a coastal needs analysis. CCF requested, not accepted.

This draft Washington CMSP Must be modified to prevent another protracted extremely expensive process that occurred in the Cape Wind Energy Project of 16 years of highly controversial legal battles. Cape Wind finally on December 4, 2017, withdrew its ocean wind energy permit and abandoned the ocean energy project in the Atlantic after costing the taxpayers and ratepayers huge amounts of time, effort, and funding over a 16 year period. This decision to withdraw the project from further development came on the heels of the withdrawal of Cape Winds’ Power Purchase Agreement a few months ago. Post cancellation survey found that over 75% of the respondents supported the withdrawal of the Cape Wind Project from Nantucket Sound with attached statements that the project was too costly, would cause environmental harm and displace existing use and fishing JOBS. There should be a lesson learned from this experience where the regulatory climate was considerably friendlier to installing new use than here in Washington. The Washington legislation was adopted to protect and preserve fishing from encroachment by new use where any new use is far less likely to succeed at presenting lacking merits of new use that could possibly overcome the much more stringent requirements in the Washington CMSP law enacted to **preemptively protect and preserve fishing**. New Use is very very unlikely to proceed on the merits to outweigh the requirements of the legislation, particularly where fixed new use could easily cause **irreputable harm** standard to be breached beyond remediation, negatively affecting an entire high debt next generation of fishermen causing excessive bankruptcies as outlined in WCMAC discussions and highlighted by the fisheries representatives on the council on numerous occasions and somehow lost in this Plan and associated EIS. The fisheries advisors have shown that **irreputable harm is imminent** and certain to occur in Washington coastal waters

from fixed structure facilities where it is a well known certainty and collaborated by the highest Mass Weather Index in the nation, that crab gear will move in large winter storms with gear documented to move over 40 miles in a single storm event where Oregon pot tagged crab gear was recovered north of Westport moved by the early December 2007 hurricane force storm that moved almost all crab gear in SW Washington waters a minimum of ten miles from set location. If a fixed anchored new facility had been anywhere in this gear movement zone it would have irretrievably tangled and stuck the crab gear in any anchored, fixed facilities located in the nearshore ocean inside of 45 fathoms eliminating any opportunity by an entire crab community from participating in the crab fishery for an extended period of time, certainly well beyond the time required to meet financial obligations to lending institutions or maintain the wellbeing of affected families. There is not sufficient gear manufacturing capacity or expertise of employees to meet this huge loss of gear in a single season in time to prevent foreclosures on indebtedness = disaster for not just individual fishing families but an entire support community as well. Off the Washington coast these huge, significant gear movements occur often yearly and at least 3 times per decade. This gear movement area needs to be placed on a Map to clearly show where EXCESS CONFLICT between existing use, fishing, occurs and new fixed use MUST AVOID this CONFLICT to meet the fisheries protective standards found in the legislation. The Washington CMSP legislation does not set up a balancing act to see which use is more in the public interest for agencies to decide through their processes, the legislation sets up stringent legal requirements that MUST be met or exceeded to preemptively protect and preserve fishing's stability and economic viability for current and future generations of fishermen – new use MUST AVOID CONFLICT and only allow MINIMAL ADVERSE IMPACT to Fishing. The public interest does not include potential destruction of a coastal fish dependent community that is reasonably foreseeable by placing a significant new fixed use such as a wave energy facility in the middle of valuable crab fishing grounds as currently mapped by Marxan in the Plan. Correction Necessary.

The Plan and associated EIS must clarify these legislative mandates that results in these outcomes found prominently in the CMSP legislation to protect fishing and not adequately incorporated into the draft Plan and EIS. These legislative mandates are not to be manipulated out of existence by a bias process to initiate new use into the Washington Coastal Waters out to 200 miles from shore.

State agencies have through process directed WCMAC and ascribed “undue significance” to establishing a pathway to ocean energy and under ascribed “*Protect and Preserve Existing Sustainable uses*” from harm and to avoid conflict with existing ocean and estuary uses even though the first guiding principle of the Washington statute is to “*Protect and Preserve Existing Sustainable uses*”. There are NO mitigation conditions in any permit that would prevent unacceptable adverse effects to already highly stressed coastal communities as a result of the Rafeedie Decision with associated federal obligation to treaty tribal fishing rights which they deem incompatible with loss of fishing area and BOEM policy of NO energy leases in the Sanctuary that would force ocean energy into the highly used fishing area south of Westport that is clear in the history of the legislative intent by conspicuously adding specific language in the 3<sup>rd</sup> Washington CMSP legislation to “*Protect and Preserve Existing Sustainable uses*” which has had insufficient weight ascribed to this intent throughout the WCMAC process to establish recommendations of the WCMAC.

The Washington crab fishery advisors recently met to discuss the adverse impacts of meeting the Rafeedie Decision (5 December 2017). The advisory group was pretty addiment that giving up any more fishing ground is really the most distasteful concession available to meet the federal court 50/50 tribal sharing crab obligation. Fact is giving up any fishing ground anywhere anymore has untenable consequences, is extremely painful, and has a very high probably to be terminal especially for the next high debt younger generation of fishermen. The crab fleet is already significantly crowded, the comments were almost 100% - **NO MORE LOSS OF FISHING GROUNDS.**

- Zero interest in expanding the western boundary
- Losing ground is a poor idea vs. time
- Appreciate No to moving the line to 40 fathoms
- Fearful of SMA expansion
- Preferred more days NO SMA adjustment
- Once we give it up we never get it back
- Absolutely oppose moving the western boundary
- No expansion, we have already given up too much fishing grounds
- Moving the western boundary is offensive and not acceptable
- Don't want to give up even one more mile on top of the 550 we've already lost
- No change to the western boundary

The loss of fishing grounds out to 40 fathoms is another 123 square miles of loss, this would be on top of the over 550 square miles of existing SMA loss north of Westport. The fleet is already at a tipping point in solvency, especially for the next generation of high debt fishermen. There is NO way to justify any additional adverse impact associated with any additional loss of fishing grounds.

The crab fleet is already suffering excessive loss of fishing ground and compressing the fleet even more is untenable and will have highly significant adverse consequences where more gear will be lost to friendly fire (propellers) adding more to the cost/# of production and less take home pay at the end of the day. Losing more ground will undoubtedly have more adverse effect on the area south of Klipsan too where the fishing gear is almost 3X as dense/mile as north of Klipsan. Any additional loss of fishing ground will have untenable adverse consequences for the entire fleet as effort transfer will exacerbate already crowded fishing grounds further reducing pounds/pot adding to the cost of production and lowering the fleet's net take home pay even more toward ZERO. Loss of any more fishing ground which is already significant is totally untenable.

Washington CMSP process failed, no intentionally refused, the coastal fishing community to review the fishing maps and better incorporate the fishing fleets' designation of high value fishing areas significantly into the Plan, including but not limited to the non-existence a crab gear movement map to exemplify the entanglement CONFLICT certain to occur in Washington waters and not necessarily found in our neighbor's waters to the south where the Mass Weather Index is significantly lower and far less likely to occur. CCF submitted Oregon Ecotrust fishing evaluation maps of SW Washington high value fishing areas; dead ended by process, the Plan does not provide any analysis of how the fleet valued the fishing grounds for protection and preservation as intended by the ORMA legislation. The WCMAC authorized Sea Grant to carry out similar investigations of fleet valuations of their "high value fishing grounds". Sea Grant enlisted Portland State University to carry out Oregon Ecotrust style mapping which they have had recent experience in mapping use of the Olympic National Park and surrounding areas by visitors utilizing the successful Ecotrust mapping model. WDFW killed that WCMAC mapping authorization. The fishing community was denied that invaluable opportunity to portray what the coastal fishing fleet valued as high value fishing grounds. In contrast, the energy proponents were allowed to get their highest value energy grounds mapped as they requested. The energy proponent's maps placed their best places for energy to exist in extremely high value fishing grounds, not a place that may AVOID CONFLICT with existing use, including fishing as intended by the legislature throughout the three recent pieces of Washington CMSP legislation. This visual misinterpretation of the legislative intent is misuse of agency discretion extending deference far out of bounce that not even the Supreme Court Decision could bring back to reality of the legislative intent. This draft CMSP, MAPS, and programmatic EIS needs to be changed and portray new use opportunities

that AVOID and have MINIMAL NO HARM impacts to existing uses including fishing that most likely occur west of the continental slope break and outside 125 fathoms. **The tone of the entire document needs to be upgraded to reflect this Protect and Preserve Existing Use Standard as the highest priority of the entire Plan as intended by the legislature.** Yes, this protect and preserve is in the plan but not in such a manner that the general public or any new use proponent would find it or understand its importance that **new use is conditional on AVOIDING CONFLICT** “if” it is to ever be installed in Washington coastal marine waters. Of all the meetings that have been held in Washington on CMSP not one public meeting outcome identified new use in marine waters as a preferred use to tradeoff existing use, FISHING, NOT ONE. The Washington draft Coastal Marine Spatial Plan needs to clarify these very important legislative intents and very high Fishery Protection Standards which go well beyond “minimize” impacts:

### **PREEMPTIVELY PROTECT AND PRESERVE FISHING**

### **PREEMPTIVELY AVOID CONFLICT WITH FISHING**

### **PREEMPTIVELY ALLOW ONLY MINIMAL ADVERSE IMPACT TO FISHING**

### **NEW USE IS CONDITIONAL TO THESE SIGNIFICANT ORMA REQUIREMENTS**

During this Washington CZMA review CCF/CRCFA will address several major areas of concern for coastal communities involving aspects of the Washington CZMA/NEPA/SEPA process affecting coastal ecosystems and coastal uses where real cumulative adverse impacts (many federally originated) to coastal communities are occurring. CZMA is a reasonable and necessary merger of cooperation of federal, state, and **local** authorities to provide a collaborative management structure to find SOLUTIONS that work best for individual coastal communities to prevent simple adverse effects so that federal mandates do not smother and discard local community needs accommodating federal, state, and **local** actions based on effects not only to coastal ecosystems but also the coastal fish/water uses that need to be protected and preserved for current and future generations sustainably that are dependent upon the coastal zone from 0 – 200 miles offshore to maintain the coastal stability and economic viability of the fish/water dependent communities. **Multiple existing cumulative coastal effects must temper CZMA activity substantially different in Washington than other state CZM programs.**

- Mouth of the Columbia River Lower Columbia Solutions Group Sediment Management Program still under development with sequential solutions slowly taking shape for the benefit of all involved. This process has taken well over a decade to reach fruition – lesson learned - patience required. Outcome is based on not only the “Best Science Available”, but went the extra mile to ensure a NO HARM OUTCOME and developed NEW SCIENCE that was necessary to understand the potential impacts of Enhanced Ocean Disposal on Fishing and to modify the ocean dumping if necessary. New scientific techniques were developed to better understand and make informed decisions in order to ensure Fishing was Protected and Preserved and the fish dependent communities would receive NO HARM from new ocean disposal sites. **True Collaboration, No Harm No Conflict Minimal Adverse Impacts Beneficial Solutions is Key takeaway, lesson to be learned, and applied to Washington Coastal Marine Planning to achieve a Win not only for the coast, but also the state and the nation.**
- Washington Coastal Marine Spatial Planning (currently in draft form so these comments will be preliminary and subject to change once the Plan and EIS are finalized)

- No more attempts to marginalize **local authorities** of Coastal Shoreline Master Programs through “housekeeping” that is also still under review and subject to change. Local authorities that extend into the EEZ, 3- 200 miles offshore were intended to be included in the CZM state/NOAA certifications is rather clear in the ORMA legislation as intended by the legislature and congress. This intent of both the state legislature and congress to place Shoreline Master Programs as a significant part of the outcome of offshore management is being short-circuited by unelected agency officials and short shifted in the Plan with only nominal mention. The Pacific County Commissioners made their intent very clear to ecology that ignoring placing the county “Ocean Section 6” into the CZM certification was inappropriate. The SMP’s are underrepresented in this draft Washington CMSP and will as a consequence be under represented and not appropriately in the state/NOAA CZM certifications. The Pacific County SMP has assigned a “Coastal High Intensity Area” that new use is allowed that AVOIDS CONFLICT and keeps Adverse Impacts MINIMAL with existing uses including fishing as instructed within the ORMA legislation as intended by the legislature.
- Grays Harbor Oil Terminal expansion and application of the Washington Ocean Resource Management Act and its implications for CZMA effects on the Washington coast as recently reviewed by the far-reaching and precedent setting Washington Supreme Court Decision set forth additional instructions relative to the ORMA legislation which directly instructed the SOC via ecology to correctly ascertain and carry out the intent of the ORMA legislation. During the final hearing before the 9 judge panel the ecology attorney clarified any doubt about the intent of the legislation, “ORMA was intended to STOP PROJECTS”. That was the intent of the legislature, to STOP PROJECTS that had adverse impacts and did not AVOID CONFLICT with existing uses including Fishing. The ecology attorney got it RIGHT at the October 2016 Grays Harbor Oil Terminal Expansion hearing before the Supreme Court but that revelation has not been adequately transferred to the Plan, in fact ecology has maintained over and over that projects cannot be prohibited, contrary to the Supreme Court Decision that states unequivocally that projects that adversely affect the coastal zone can be prohibited outright. This prohibition is possible where conflict with existing use, fishing is not avoided, the minimal adverse impact is surpassed, and Fishing is not preemptively protected and preserved for current and future generations. This Supreme Court Decision is precedent setting in its scope is to be **broadly applied** in water and on shore in the SMP areas of the four coastal counties out to 200 miles from shore as intended by the legislature and positively upheld in this landmark ruling which dramatically reigned in the agency deference to interpret ORMA and totally in line with CCF amicus brief in this case which **MUST still be applied** liberally in this Washington CMSP. It must be remembered that CCF helped the legislature draft the three recent additions to ORMA and fully understands the intent of the legislation in which the Supreme Court got it RIGHT to preemptively protect existing use and the marine ecology.
- Executive Orders 12898 and 13777 apply directly to any coastal water activity CZM certifications. 12898 is easily triggered by the deplorable coastal demographics presented in this presentation where federal actions **must account for and prevent adverse impacts** to low income communities. 13777 is triggered where regulation and implementation of those regulations negatively impact existing jobs, in this case, fish sensitive JOBS that require access to fish in an environment of cumulative federal actions that have already provided significant adverse impact to Washington coastal fishing JOBS associated with the Rafeedie Decision and loss of 50% of all fish access on 70% of the Washington coast forcing tremendous fishing effort shift to SW Washington coastal waters where any new use will be at increased CONFLICT with existing use, fishing, that is already highly condensed and reliant upon just

- 30% of the coast and in crab fishing often condensed to 50% of the crab fleet fishing in only 9% of the Washington coastal waters. Significant adverse impacts cannot be ignored by continually resetting the cumulative impacts already affecting the coastal counties that already enjoy extra protections not offered the rest of the state through ORMA.
- Washington values are progressive at protecting the majority of the natural coastal zone beyond that found in other states. Sixty percent of the Washington coast is dedicated to the Olympic Marine National Sanctuary adjacent to the Olympic National Park. A large portion of the Willapa Bay is a National Wildlife Reserve. These Washington values also reserved the right of open public access and fishing within the sanctuary and the reserve; a value that is laconic to Washington and vitally important our state citizens. Fishing is sacred in Washington and these values are reflected in our dedication to protecting the natural environment from industrialization as lessons learned in Puget Sound and protecting fishing even in these wild preserves.
  - CZM state/NOAA certifications must also specifically address the significant threat of Domoic acid which could easily adversely impact coastal use, fishing which will significantly magnify any additional adverse cumulative anthropogenic interference and dislocation of the coastal crab fishery caused by addition of any new use in coastal waters on the continental shelf.
  - The Plan erroneously attempt to project some potential compatible uses in the Coastal Zone stating that fish rearing net pens may even be compatible with the co-location in marine protected areas. Example: ecology is fighting the Willapa Harbor Oyster Growers from utilizing a proven chemical use of approximately 250#/year as toxic to the environment while in Chile the salmon fish farms are polluting the area with over 557 tons of a much more deadly chemical treatment, over 2000 X more toxins in the water. Pacific County MRC supported remedial testing of chemicals in Willapa Bay and could find NO detectable imidacloprid residue in the bay in the areas of experimental treatment. This finding is significant and should be considered for use that also will result in additional rearing area for juvenile salmon and other fish that the coastal communities rely upon for stability and viability.

**Lower Columbia River Solutions Group** is currently supported by the Washington and Oregon CZMA programs and is a great model of cooperation between federal, state, local authorities and local people working together for common goals and needs of all levels successfully. This effective Coastal Zone Management support is finding common ground and allows people with divergent views to act collectively to solve everyone's needs with no one left behind suffering adverse impacts from solutions necessary to maintain deepdraft shipping in one of the largest grain export areas in the nation that benefits the public from Ilwaco, Washington to Cedar Rapids, Iowa and beyond. This is a great success story. The LCSG is a science driven SOLUTIONS MODEL for the nation to focus attention on. This project started as a courtroom brawl and is ending with a peaceful resolution getting national attention. In the fall of 2015 CRCFA spoke at the national Water Protection Network in Washington DC about this transformational process in a presentation called, "From Dead Sailors to Science Driven Policy." WPN has about 240 member groups from around the nation and this national model will help drive meaningful, positive solutions wherever Federal, State, and **Local** needs collide. The primary ingredient in the LCSG process is that the people involved were all willing to put their differences to the side of the collision of needs and focus on benefits for everyone with an eye to a win for all – a situation that took commitment from everyone with NO hidden agendas. Will this work in every situation, absolutely not, but the LCSG has been a very good example of what can happen when everyone's health and welfare is the driving force where a benefit for everyone is the primary focus where **"REAL" needs are met beneficially with no one left behind.** This LCSG process now lead by Washington/Oregon CZMA officials is producing TRUST in future decisionmaking by replacing command control USACE decisions to a science based decisionmaking process and a positive model

for the nation to utilize. Is it perfect, short answer NO, but a far better result and a major improvement over historical sediment management which has led to multiple court actions. The Washington CMSP process could utilize some of the principles found in the LCSG **NO HARM SOLUTION** process that has taken over a decade to produce positive, durable results that have not risen in the Washington CMSP process because the needs of the coastal uses were not adequately addressed in the process to produce **NO HARM SOLUTIONS** with excessive deference given to unproven new uses that will disrupt and displace many on the coast with new uses that will not be beneficial to those impacted because the hunt for solutions has not adequately attempted to avoid conflict and keep adverse impacts to **MINIMAL** levels instead rely on “old time verbiage” to simply minimize adverse impacts which in the past is anything less than total displacement of the existing use. This verbiage is especially prevalent in the Fisheries Protective Standards.

Benefits of this close working relationship currently found in the LCSG example are spilling over into other areas of beneficial solutions for the entire region well beyond the direct sediment management plan. Dredge spoils are being converted to beneficial assets addressing a growing coastal erosion problem in the Northwest. New developing science driven through this process is meeting national/state/and **local** needs with no dead fishermen, no dead crab – a major, major improvement from past mound induced wave amplification in micro-sized very dangerous fatal, fatal to both crab fishermen and crab alike at small sized disposal sites where mounding is prevalent. Sediment is being spread over 10 times the distance associated with original micro-sized disposal sites in the nearshore allowing the crab to enter the fishery at a later date instead of facing immediate burial mortality, a major gain for rural coastal communities correcting historical injustices associated with dredge disposal sites that historically produced extremely dangerous mound induced wave amplification. The nearshore disposal is contributing to the littoral drift adding “some” sediment to coastal beaches but not enough to stem the growing coastal erosion problem associated with reduced Columbia River flows and the jetties acting as a nozzle to shoot sand offshore beyond the littoral drift and non-accessible to beach maintenance and nourishment. This cooperation has led to the only new start USACE project in the nation with the A Jetty, Columbia River North and South Jetty rehabilitation program. Additional benefits have produced a 10% carveout of Harbor Maintenance Trust Funds for dredging small channels across the entire nation that will be a dedicated funding source supporting small rural coastal harbors at \$150 million/year by 2025 as a permanent funding source. This year this CZMA driven collaborative effort has resulted in the highest degree of collaboration I’ve witnessed in my 70 years – the Ilwaco Channel is dredged twice and the Chinook Channel received dredging even though NOT in the federal budget directly, but added to the Portland District Work Plan – this took a degree of enthusiastic collaboration aided by the Pacific Northwest Waterways Association to amplified this major collaborative effort that is being facilitated by the CZMA program – exemplary. These many accomplishments have been facilitated by Owens, Cogan, and Greene that has been the glue necessary to lead to these major wins for everyone at the local, state, and national level to provide a better coastal marine spatial plan that is based on beneficial impacts to all concerns. This is a major accomplishment of the CZMA program worth its weight in gold producing benefits beyond expectations of the original participants that started as a courtroom brawl and ending is a WIN WIN for all participants – simply amazing and most beneficial. Benefits beyond expectations accrue when everyone works together for a common goal that has at its heart **NO HARM BENEFICIAL SOLUTIONS** where all concerns are able to put their **NEEDS** on the table and a hunt for a solution that meets everyone’s needs. **Note: this CMSP never did a coastal needs assessment.** Without a needs assessment there is no way to meet the peoples’ needs of the local, state, and national level in marine waters of Washington in this Plan. If a needs assessment and a hunt for honest beneficial outcomes for all interests in the coastal zone this could have been accomplished. There must be someplace inside the GLD that new use, including ocean energy could coexist with all other existing uses with only **MINIMAL** adverse impact with a benefit to all ocean users, new and old, but this was impossible when the Plan mapped ocean energy in high value fishing areas just because that was the very best place that ocean energy wanted to be placed. There was **NO** honest attempt to locate new

use outside of high value fishing areas that exist in the narrow area south of Westport and inside the continental slope break inside of 125 fathoms of water.

Currently there is a new coastal marine water use proposed to extract ocean energy in the form of hydrogen that is proposing to locate west of the Washington shelf break by utilizing a medium sized anchored barge that may meet beneficial wins for all ocean participants that has recently been formed by the very coastal marine engineer that should have been hired to analyze the costs and area required by other potential uses of the Washington coastal offshore waters but was never considered in this Plan, in fact suppressed as cost/area benefit of other ocean uses was NOT allowed on the discussion table, let alone pursued so that the public and the legislature could have reasonable estimates to better understand the real prohibitive costs and areas involved in the most common examples of energy extraction that could have easily been bracketed by the Oregon examples of OPT and Principle Power, but denied the necessary public scrutiny to protect the ratepayer and taxpayer from getting gouged by illicit projects that would be prohibitively expensive and gobble excess area of the marine waters with very little electrical output for the uses displaced and coastal communities left mortally wounded.

Additional Notes on the CZM sediment management program: CRCFA/CCF are not obstructionist oriented as many environmental groups have become - our fishing industry needs dredging to occur just as much as our inland friends, but we may have a slightly different vision of future sediment management beyond just the "Immediate Least Cost" to dig & dispose of sediments at the MCR. We have never taken a NIMO - Not in My Ocean, approach, but CRCFA has consistently promoted coastal community well-being which is based on a properly functioning marine water ecosystem including additional parameters of human health and safety considerations which dictate open access to fish in the only waters that are not corrupted by other federal obligations on 70% of the north Washington coast. Crab is the last major coastal fishery capable of supporting coast fishing infrastructure and is larger than all other coastal fisheries in both Washington and Oregon combined most years. Saving crab contributes to saving our entire coastal fishing heritage and maintaining the coastal economic reliance on SEAFOOD for our coastal rural communities' economic stability and viability into the foreseeable future. We all need to consider the lesson learned in the loss of SALMON which occurred one FONSI at a time over a century. **Species preservation** is far superior to very very expensive and ineffective replacement mitigation. Rice Island has no comparison as a "Least Cost Option" gone terribly, terribly WRONG. Billions and billions of ratepayer and taxpayer salmon rehabilitation dollars have been eaten by the largest Caspian tern colony in the world, billions of dollars that could have been used for saving our coasts from increasing erosion rates.

The CCF/CRCFA goal is to change MCR dredging business as usual, eliminate the Paul King Syndrome where "PROCESS" no longer trumps good science, and create an improved standard of dredge material use that provides crab industry LIFE SAFETY and natural resource protections while providing a wise forward looking strategic sediment handling plan that actually contributes to stabilizing coastal erosion in a measurable manner. **Measurable is the key qualifier.** Quantifiers associated with ocean disposal like some or better than nothing are unacceptable measurements. We will continue to advocate for the best science and direct beach placement to become the focus of Washington CZM best practices relative to the MCR sediment management program that realistically places sediments directly on the beach that was recommended by the nation's BEST Coastal Scientist and Engineers including the USACE at the Cape D Technical Forum in 2007. "Current Least Cost" still dominates dredge disposal and this prominent recommendation is still AWOL and erosion on the coast is still on the increase. This Plan almost completely ignores coastal sediment requirements and needs to incorporate the new concept of "Coastal Sediment Rights".

Everyone must realize that our goal is NOT current "Corps' Least Cost" and is in conflict with the historical USACE principles and guidelines which the CEQ has ordered changes. We do however, strongly believe that forward looking use of a valid wider scientific community integration that the LCSG brings to the table for development of regional sediment management at the MCR will produce far better long-term results for our nation and in the long-term be more cost effective use of taxpayer money and the public trust. **A necessary change in the Corps' Principles and Guidelines as well as reasonable adjustments including CZMA re-consistency determination are necessary to**



**accomplish this lofty goal.** The Pacific County SMP update addressed the anthropogenic interruption of the coastal sediment supply and demand social justice for the coast by those that caused the federal interests that truncated the historical coastal sediment supply that needs federal mitigation to directly address our growing coastal erosion. This CMSP should address through initiation of a new concept, “Coastal Sediment Rights”. Federal actions have truncated the sediment supply to the coast causing a growing coastal sediment deficiency which began over a hundred years ago with the construction of the North and South Jetties that act as a nozzle and blew over 300 - 400 million cubic yards of sand offshore beyond the littoral drift, lost to the coast to balance a rising sea forever. Mitigation required and not in the Plan.

**The Coastal sediment supply** of the largest river on the west coast has been effectively truncated by federal actions of taming the Columbia River – Dam building, River flow manipulation with no more spring freshets, jetty construction in the shape of a nozzle that shot millions cubic yards of sediment offshore, channelization, upland disposal, hauling massive quantities of sediment offshore beyond the littoral drift, shifting channels that caused Baker Bay to become a sediment sink, and more. The Lower Columbia Solutions Group has been working on a temporary bandaid with nearshore disposal that has not proven effective at abating coastal erosion anywhere it has been tried. The USACE maintained that this nearshore disposal would stop the breach at Halfmoon Bay at Westport up until the day it breached. USACE has in recent years trucked thousands of cubic yards of sediment to the beach at both the North Jetty at Cape Disappointment State Park and at the root of the South Jetty adjacent to Halfmoon Bay at Westport to augment the beach where nearshore disposal has not been able to adequately address the erosion problem hotspots. All this and more before any new use is contemplated in the coastal zone that will be affected by a rising sea associated with long-term climate change that is also negatively affecting the public’s access to a declining salmon resource which make the coastal waters of Washington exceptionally challenging to manage without serious RISK of CONFLICT that could eliminate the fishing industry completely on our coast when examined in conjunction with all the other adverse cumulative effects found in the coastal zone, especially those UNIQUE to only Washington.

A number of years ago Oregon Governor Kulongoski stated the issues affecting the coastal zone pretty well related to New Emerging Uses and Ocean Development that also fit Washington waters as well: “The people who live and work on the ocean must have a place at the table” and “**The new ocean uses must benefit - not disrupt - existing economic and recreational uses of our ocean.**” Another recent notable quote from Oregon’s Senator Betsy Johnson, co-founder of LCSG, “**Do it with the Coast, not TOO the coast**”. Both of these statements were aimed at FISH FIRST in the development cycle of new uses and retention of iconic coastal fishing industries use of the precautionary approach and error in favor of the species and fishing through well-reasoned scientifically based decisionmaking that employ publicly open and accessible scientific approaches that use adaptive management measures by starting very SMALL and only expanding after multiple year study that teases out the nuisances of the marine ecosystem that includes impacts to people in coastal communities dependent upon fish for stability and viability that are yet unknown using best worldwide monitoring practices associated with multiple new uses. **Even these small experimental new use sites MUST avoid conflict and harm to existing uses.** We must not learn at the expense of disruption to existing uses. Ocean ecosystem analysis is still in its infancy and major new science will have to be developed, similar to new techniques still developing cutting edge science at the MCR supported by both Washington and Oregon CZM programs working closely with **local**, state, federal entities, coastal citizens, and affected industry – sand tracer studies, Campods deployed on fishing style longlines, realtime radio tracking of crab affected by ocean dumping, and more including development of the MABRI, video identification and counts of visible organisms in underwater video by the Portland District USACE and Monterey Bay Aquarium utilizing video collected under the LCSG and ground truthed by visual counts of ocean species in the same videos use in the development of the MABRI computer analysis to verify the legitimacy of the MABRI system. These species identifications have been done visually by Oregon state University graduate students for **oversight** on the developing MABRI computer identifications and counts as a check on accuracy. The LCSG is gradually embracing a future vision of MCR sediment management regime that is reaching beyond



"Least Cost". The ongoing South Jetty Site scientific investigations are a cut above anything done in this nation and those studies are continually over-turning past scientific assumptions and continuing to build a superior scientific base that is just beginning to realize the potential of injecting HONEST inquisitive science into the FACT BASED decisionmaking as we begin to advance 21<sup>st</sup> century science into informed decisions into an area of science that is still in its infancy in our coastal zone. Mistakes will be made, but if the precautionary principle is utilized and industrial scale development is slow, very slow at advancing we can learn and adapt to a **"NO NET LOSS"** policy of adequate scientific monitoring and continual correction is done at frequent enough intervals to prevent total disruption and displacement of "Existing Sustainable Uses" including fishing. The Washington/Oregon cooperative CZM programs at the MCR are proving their value year after year with beneficial practices that benefit the local, state, and national citizens in multiple ways providing a model for the nation that EPA is beginning to adopt and apply nationally.

**Washington Coastal Marine Spatial Plan** is mandated by state law to become a part of the CZMA in order for the plan results to primarily protect and preserve existing sustainable uses, including fisheries, while addressing the possibility of new use in the coastal zone if NO conflict areas can be exposed through the CMSP process, which is not currently the case in this draft CMSP or EIS. This CMSP process has been considerably more difficult where the collision of coastal needs with inland carbon ideology has been very rocky and is not yet complete, but coming to CZMA fruition where it is our hope that the intent of the Washington state CMSP legislation is honored as described by the Washington State Supreme Court, explained later under the Grays Harbor Oil Terminal discussions deeper in this letter. The major problem associated with the Washington CMSP was that the coastal needs were never properly assessed and therefore could not be adequately addressed in the Plan to work collaboratively with **LOCAL**, state, and national interests leading to the best **BENEFICIAL NO HARM** solutions. The Plan however in its preliminary rough draft did state that there is **NO** room on the Washington coast jurisdictional waters for industrial scale ocean development which all the preliminary information supports and this will need to be adequately incorporated into the Washington/NOAA CZM program which is at direct odds with BOEM leasing procedures. The State/NOAA CZM Certifications are intended to look at reasonably foreseeable adverse impacts to coastal uses and preemptively prevent them from occurring while utilizing the informative science with **NO** important **FACTS** left behind to make informed decisions that protect existing uses including fishing from more than **MINIMAL** adverse impacts.

The very first Washington CMSP meeting started with a command control presentation by the governor's representative suppressing and crushing the voice of the coast in no uncertain terms with a distinct tone of disdain for coastal needs and starting from a place of total confrontation. Every issue became a fight for survival for the coast with a heavy hand of suppression from the state agencies at one point one of the agency personnel stating, "let the courts decide", that is exactly where the process went indirectly where the Washington Ocean Resource Management Act was interpreted by the Washington Supreme Court for the first time since its inception decades earlier at the Grays Harbor Crude by Rail Oil Terminal case. That court decision upheld all the issues the fishing industry had been advocating throughout the CMSP process where the plain language of ORMA directed legislative intent to **PREEMPTIVELY** Prevent **HARM** to coastal uses and the marine ecology that supported coastal fish dependent communities.

Federal obligations to tribal treaties were never objectively put into reasonable perspective that portrayed the reality of the significant adverse effects of fishing concentration in the 38 miles south of tribal treaty areas, south of Westport, the only place 50/50 fish sharing requirement did not apply. This tremendous effort shift south pushed Washington fishermen even out of state further south causing the **highest fatality rate of any occupation in the nation** in Dungeness crab fishery, that occurs in a dangerous mid-winter fishery where human health and safety never received adequate consideration that historical cumulative significant adverse effects caused before any additional loss of prime fishing grounds occur in the Washington coastal zone from 0 – 200 miles offshore. BOEM has shown a callous disregard for displacing fishing almost everywhere they have issued energy leases

and these issues are greatly magnified in the Washington coastal zone which is UNIQUE in the nation and MUST be treated with more respect for coastal fish dependent communities than anywhere else in the nation. Existing Significant Adverse Impacts to the coastal fisheries are astounding and not properly addressed within this draft plan. The **local authorities** responded appropriately to this situation in Pacific County in their Shoreline Master Program Section 6 Ocean Section prohibiting almost all fixed structures to protect the fisheries from further adverse impacts (some minor exceptions apply). Section 6 also established zoning criteria with the inclusion of an industrial high intensity area in the same manner as other water protections across the county where industrial development is concentrated in Port Coastal High Intensity areas only. The Washington CMSP ignored these “local” authorities and the intent of the Washington legislature which must become a part of the Washington/NOAA CZMA approved process as intended by both the Washington legislature and congress that mandates coordination between federal, state, and **local** authorities with only minor exceptions. Failure of Allocation of funds and time is not an excuse for ignoring these LOCAL AUTHORITIES as directed in the CZMA legislation. Emphasis ADDED – **Local Authorities MATTER and MUST be included adequately in the Washington CMSP so that they can be placed with SIGNIFICANCE into the State/NOAA CZM certifications as intended by both the Washington legislature and congress.**

Washington CMSP Marxan map products also fail the reasonable foreseeable effects test. There is NO way to determine coastal dependency on existing coastal uses as currently mapped with any degree of precision in order to avoid conflict from new use with only MINIMAL adverse impact that may come to the coastal zone that could be potentially inflicted by new use on fishing. Crab Fishing which supplies half the coastal fishing revenue on the coast most years is given the same weight as walking the dog on the beach as an existing use or sardine fishing that has not occurred in over three years and has NO coastal fishing vessels involved in the fishery. The entire basis of the current Plan maps is simply the individual number of uses that do not necessarily even contribute to the state or coastal economy in any meaningful manner. This map methodology is masking the reasonably foreseeable impacts on the coastal zone fish dependent communities and especially shortchanges the coastal dependency on fishing effects that both state and federal governments intended to utilize to protect and preserve coastal fishing stability and economic viability, particularly preserving high value fishing areas from future new development which was directed to AVOID CONFLICT. **Correction Necessary.**

The state agency in charge of the CZMA/State/NOAA process has said time and again that there is no way to say NO and prohibit new use that is foreseeable to produce adverse impacts to fishing to a federal action in the outer continental shelf beyond 3 miles. Historical CZM processes concur with this assessment 95% of the time across the nation. We all must realize that Washington CMSP is significantly DIFFERENT than any other state in the nation and the results of the CZM process MUST also be SIGNIFICANTLY DIFFERENT and much more protective of existing coastal uses including fishing than any other state in the nation. Historical CUMULATIVE and UNIQUE Federal actions only found on the Washington coast have existing severe cumulative SIGNIFICANT adverse effects on Washington’s coastal zone UNIQUE in the nation making decisions about new future uses much more unlikely to occur in Washington coastal zone waters than anyplace else in the nation. These existing cumulative UNIQUE significant adverse impacts on the Washington coastal zone need to be far better portrayed in this draft Plan before it becomes permanent. Washington/NOAA CZM certifications need to underline these nationally UNIQUE situations that will encourage new use to locate in areas not as extensively and adversely impacted **by significant adverse effects reasonably foreseeable on the Washington coast that are not found anyplace else in the nation.**

**Housekeeping** by Washington Department of Ecology is currently in the process of updating guidance to the state Shoreline Master Program (SMP) through what Ecology describes as “housekeeping”. The people of the coast and legislature does not consider ignoring important state law that governs the coastal zone by unelected agency officials as simple “housekeeping”. Evidently Ecology and NOAA CZM officials have been ignoring state and congressional legislation that calls for federal actions to be fully consistent with state and **“local”**

authorities out of convenience and the complications of how SMP pieces of Washington law has over 200 SMP's throughout the state. However, there is only one county (Pacific County) SMP authority in the state that has had an active ocean section in its SMP and has had since 1997 which has been neglected by arbitrary and capricious actions erroneously shelved for over a decade through illicit unelected official practice contrary to legislative and congressional intent. State/NOAA CZM omitting "local authority is an arbitrary breach in handling the CZMA process and must be corrected ASAP before this substandard situation is tested by a project proposal in coastal waters. All the Pacific County Commissioners also agree, take this omission as a very serious breach of state and local authority, and sent Ecology a letter through their Prosecuting Attorney Mark McClain (attached to this letter) to correct this deficiency and reinstate the county local authority into the approved Washington State/NOAA program and include "local authority" as a functional primary part of the CZM program directly to ensure that local authorities are equal in the CZM approved program and the process works as intended down to the local level as an integral relationship as equal partners in this federal, state, and local CZM process as intended by congress and the state legislature which gave the four coastal counties extra protections in ORMA not found in inland coastal zones like Puget Sound. **CORRECTIVE ACTION REQUIRED** to reinstate the full local authority and integrity of the CZM program designed by elected officials and currently short-circuited by mutual agreement of agency personal from both Ecology and NOAA. **This is a MUST correction in the current NOAA/State approved CZM program** that is directed in the CMSP legislation as intended. Local authorities include slightly higher and more specific standards and offer a greater degree of protection for existing uses including fishing than Ecology WAC's that **MUST** be directly assessed in determining validity and consistency of federal actions in Washington coastal waters. Pacific County recent update to their SMP is major milestone in the fight for the economic health of our communities and absolutely irresponsible to exclude it from the Plan and the CZM state/NOAA certifications.

**Grays Harbor Oil Terminal Expansion** was the first court test of the Washington Ocean Resource Management Act and its interaction with the State and Local Shoreline Management Act the primary foundation of the CZMA NOAA/STATE approved program. This Oil Terminal Expansion Permit process selectively omitted the major pieces of the CZM program for the effects test relative to Washington Ocean Resources Management Act. The Washington Supreme Court Decision in the case highlighted the many deficiencies found in the Ecology proceedings which attempted to again short-circuit the intent of the legislation. Review of the application of ORMA as elaborated at the State Supreme Court and applied to the Washington Coastal Marine Spatial Planning process and the associated EIS is warranted to be adequately incorporated into the Plan.

Washington Supreme Court ruling - 92552-6 - Quinault Indian Nation, et al. v. City of Hoquiam, et al. court decision is included by reference

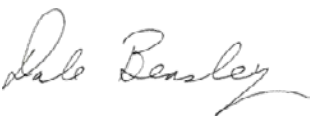
The Washington Supreme Court Rulings are applicable to other agency actions to many findings in this case; especially the NOAA/STATE approved CZMA program:

#### Washington Ocean Resource Management Act – Supreme Court Review 12 January 2017

- 1) Including but not limited to:
- 2) When interpreting statutes, fundamental purpose of an agency is to ascertain and carry out the **intent** of the legislature
- 3) ORMA "articulates policies and establish guidelines for the exercise of state and local management authority over Washington's coastal waters, seabed, and shorelines," [**emphasize local authority**]
- 4) Some uses may pose unacceptable environmental or **social risks** [including coastal fisheries]

- 5) Commercial endeavors may be prohibited if they are “potentially” destructive to the environment or simply adverse to existing coastal uses including fishing [simple adverse impact is a much higher standard than significant adverse impact]
- 6) apply the “plain language” of the statute [in establishing legislative intent]
- 7) The Supreme Court would have even been more forthright if they had reviewed the enabling legislation and not just the associated Washington Administrative Code.
- 8) Legislature intended ORMA was to preemptively protect and combat current environmental and existing use dangers and potential risks to the extent of prohibiting potentially adverse activities
- 9) ORMA is to be construed broadly and liberally in its applications to achieve statutes and legislative protective goals for the environment and existing uses (ecology has interpreted ORMA too narrowly)
- 10) ORMA does not apply to existing sustainable uses including fishing
- 11) ORMA gives preference to existing sustainable uses; energy extraction of any kind is a non-sustainable use by definition [this includes ocean energy – wind, wave, tidal, other]
- 12) ORMA criteria mandates that new use avoid conflict and only allows MINIMAL conflict with existing uses including fishing [Minimal is a much higher standard than minimize adverse impacts]
- 13) Actions that require government permits and (2) will adversely impact renewable resources, navigation, fishing, or other existing "ocean or coastal uses" are subject to ORMA and may be prohibited
- 14) Supreme Court further gives rules and regulations promulgated by administrative bodies a rational and sensible interpretation based on plain language and legislative intent of the underlying legislation
- 15) It is valid for an agency to "fill in the gaps" via WAC statutory construction as long as the agency does not effectively amend the underlying RCW statute
- 16) DOE's contrary interpretation incorrectly narrows the definition of " ocean uses," thereby improperly altering the intent of ORMA [eliminating local authority is arbitrary and inappropriate alteration of legislative statutes and includes exclusion of local authorities]
- 17) Supreme Court determined the meaning of undefined terms in regulation, we may look to standard English dictionaries.
- 18) ORMA is integrated into the state Shoreline Master Program **local** authorities
- 19) "ocean uses" apply to coastal waters, seabed, and shorelines under ORMA the primary interface associated with the NOAA/State approved CZM program

Washington CMSP incorporated into the CZMA is UNIQUE in the nation in that Washington CMSP is the only state coastal planning process legislated expressly to **Protect and Preserve Existing Sustainable Uses including fishing and to ensure new uses were conditional that avoided conflict and only produced MINIMAL harm to fishing.** All other state CMSP processes were initiated to install new use, ocean energy, marine reserves, etc.. Pacific County SMP incorporated their local authority in the mold of the state legislation to protect existing uses including fishing and must be far better integrated into the body of the CMSP and associated EIS in the final draft as intended by the legislature.



Dale Beasley, President Coalition of Coastal Fisheries & Columbia River Crab Fisherman's Association

Footnote: Additional notes some from our 2014 CZM evaluation that the Washington CZM program may consider

### **NEPA/SEPA Procedures do not guarantee Substantive Outcomes - PROBLEM**

- 1) NEPA imposes procedural requirements on agencies and does not mandate substantive outcomes NORTHWEST ENVIRONMENTAL ADVOCATES v. NMFS 10079 outcomes. *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005); see *Klamath-Siskiyou*, 387 F.3d at 993; *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004); *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 558 (1978). For "major Federal actions significantly affecting the quality of the human environment," 42 U.S.C. § 4332(C), NEPA requires an agency to prepare an environmental impact statement. *Klamath-Siskiyou*, 387 F.3d at 993. An environmental impact statement "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. We do not yet know how WRDA 2007 will play into this coastal zone process that places substantial "new" federal criteria on all water resource developments in US waters by all agencies as mandated by CEQ and places a mandate on updating the USACE 1983 Water Resource Development Principles and Standards to apply to all federal agencies and not just the USACE. A major concern and in some circumstances welcome relief is the new administration and its numerous reversals of many formal presidential executive orders that need to be sorted out and applied which may place much greater responsibility on state and **local** consistency provisions to accomplish adequate protections for coastal ecosystems and existing uses including. Washington CZM needs to explore these potential changes & how our coast will be affected as a result and what we can do to help our coastal rural communities flourish in the coming years. Outcomes that protect and preserve both marine water ecosystems and existing uses including fishing must change where scientific integrity drives the end results of the NEPA/SEPA not process alone. The USACE has used this process to bury science during the Columbia River Channel Deepening and was aided by multiple court decisions which CRCFA has called the Paul King Syndrome. Future CZM processes must avoid similar falling into the Paul King Syndrome and further the current LCSG CZM process where science is being pushed to the forefront of decisionmaking and a much-welcomed situation for better collaboration with rural coastal fish/water dependent communities where "least cost" is still lurking significantly in the process clouding the placement of the nearshore North Head Site. Recent deceptive Corps diagrams limiting the existing authority of the Corps to move further north have been utilized illicitly. Historical analysis of haul distances to the Deep Water Site have always used River Mile 0 as the point of consideration for haul distance analysis. The most recent diagram moved the haul distance center to River Mile 3, shortening the distance of haul considerably and the concentric haul distances by miles which gravely affects the north existing limits of current Corps authorities for remaining with existing spending authorities. In addition, the Corps could average the costs of shortened distances to disposal at the South Jetty Site and extended range of the North Head Site further north into the Mudhole as originally contemplated by the LCSG as acceptable. Some adulterated manipulation of FACTS is still in play and must be addressed before location and any disposal in the North Head Site is permitted. The CZM process needs to correct these FACTUAL deficiencies and keep pressing science forward into uncharted waters.

### **Washington CZMA needs to DIRECTLY address Coastal Erosion Hotspots**

**Change** is like dancing with a hungry grizzly bear in the springtime, but it **MUST** be done

- 2) According to the 2 assenting judges in the 9<sup>th</sup> circuit court of appeals in the Columbia River Channel Deepening lawsuit, "The Corps took a hard look at the anticipated disposal of 4.5 mcy of dredged sediment per year from the MCR project and planned appropriately to minimize coastal erosion." This "hard look" did not quantify which percentage of the annual dredge spoils, up to or over 4.5 mcy would actually

accumulate on coastal beaches nor did they have any relevant information relative to actual sediment pathways which of the recorded geologic history of the NOAA bathymetric ocean mapping over the last hundred years clearly shows that the vast majority of all MCR sediment moves mainly offshore and to the north with a very small portion of the discharge actually reaching coastal shorelines. Offshore Oregon has actually suffered a very severe deepening of the Clatsop Littoral Cell. Outside analysis of MCR sediment pathways by Pacific International Engineering collaborates the offshore & north geologic processes indicated by the historical NOAA bathymetric surveys and is very difficult to overlook and ignore. The assenting judges did not have this wealth of scientific information to examine as it was not a direct part of the EIS process and will make it more difficult for the states of Washington and Oregon to certify CZMA consistency who must begin to more closely examine sediment pathways which were a requirement of the last round of certifications, but never fulfilled leaving a glaring crack with which to insist on more strategic beneficial placement of sediments directly on the beaches to directly offset loss of sediment supply that contributes significantly to increasing coastal erosion potential. The recent USACE Corps tracer studies are a drastic improvement on past attempts at sediment pathways but some major flaws still need to be factored into the final analysis before any definitive statements about sediment pathways out of the SWS can be determined. Dumping the tracers at the top of the hill instead of the bottom of the hill where most recent sediment has been discharged will considerably alter the end results and favor some reaching the beach as a pathway. The tracer study has some superior attributes over building a mound and attempting to follow it, to the Corps credit. In 2007 the best coastal scientist and engineers gathered at the Cape Disappointment Technical Forum to evaluate Washington/Oregon coastal erosion and came to unanimous conclusion that the BEST scientific information available was to put dredged sediment directly on the beach or immediate adjacent surf line to combat a growing coastal erosion that is being exacerbated by climate change and sea level rise. This BEST scientific analysis needs to be included in the Washington CMSP to better accentuate the best results available are not occurring.

CRCFA continues to work toward dredge project solutions that provide strategic, more sustainable, safety oriented, beneficial disposal to produce less environmental harm through avoidance, minimization, and replacement mitigation of resource (crab) impacts that **provide measurable sand to the coastal shorelines** in meaningful timeframes through projects like the Benson Beach SW Washington Littoral Drift Restoration Project. CRAFA supported moving forward with a 2010 direct pump ashore project to regain political momentum for the project. Long term we firmly believe that up to 2 mcy per year ~~could~~ **MUST** be placed on Benson Beach through the sump – re-pump process or direct beach pump ashore and that the State of Washington and especially **Pacific County in their current local SMP update** mandated to that end as well. Direct beach placement is still in doubt as a result of the Corps manipulating the "PROCESS" and relying excessively on the "least cost option" instead of adequately mitigating for truncation of Columbia River sediment supply to the coast. Relative to Direct Beach Placement of sediments on Benson Beach prior to 2010 the USACE Portland District was consulted before advocating congress to fund a direct beach placement test at Benson Beach. USACE recommended placement of funds in the USACE Regional Sediment Management Program, which congress did. Immediately upon receiving the congressional appropriation the **Corps promptly marooned the cash and stated that RSM Program did not allow direct beach placement**. Congress was again approached after additional consultation with the Corps and re-authorized language in an appropriation bill aimed at freeing the marooned cash from the illicit deposit and makes it available for placement of sediment on Benson Beach. Again the Corps waffled on the ability to free the funds. "PROCESS" and the Paul King Syndrome worked overtime in that NO sediment has been placed directly on the beach except that trucked in from over 80 miles away to shore up the North Jetty since 2010. Only a very persistent public advocacy and the State of Washington supplying 50% match to the Benson Beach direct pump ashore experiment allowed the direct beach placement of MCR sediment to move forward way back in 2010. Results of the Benson Beach sand tracer study were a miserable failure, seems the tracers magically disappeared??? Persistent and informed interaction of the

fishing fleet directly in this CZM process on a day to day hands on approach that has forced new science to be developed that has not previously been available and forcing the “process” to move beyond the curtains of the “Paul King Syndrome” and continually demand FACT BASED DECISIONMAKING instead of hiding behind “process”. The nearshore disposal (a mile or more offshore) is progressing, but this progression will only delay the inevitable action required to slow coastal erosion – DIRECT BEACH PLACEMENT. Washington CZM program needs to begin advocating for the Best Science Available that dictates better erosion control – direct beach placement of MCR dredged sediments. History Matters and unless Washington starts to strongly advocate federal mitigation for a truncated sediment supply through direct beach placement asserting Coastal Sediment Rights of MCR dredged sediments the coastal erosion problem will continue to grow worse; the CZM program can help create better outcomes for the growing coastal erosion problem on the Washington coast.

### **Washington CZM MUST address Human Health and Safety**

- 3) Human health and safety was specifically added by CRCFA through our membership in the National Water Protection Network advocacy to the WRDA 2007 federal legislation to require that coastal nearshore disposal be controlled and limited mound induce wave amplification actively MONITORED immediately after disposal and upper limits of increased wave amplification be ensured as one of the new standards required for Water Resource Projects. At the conclusion of the 2016 dredge disposal at the South Jetty Site there was NO MONITORING of the increased bathymetry at the site and NO way to know if the 10% wave amplification criteria was exceeded or not. In order to better and more directly address these failures of ensuring human health and safety, Pacific County local SMP update added specific criteria limits of 10% mound induced wave amplification over baseline bathymetric conditions. Washington CZM program can and must ensure that these safety limits are strictly adhered to by including local authorities directly in the federal consistency requires as an approved NOAA/STATE CZM to ensure that human health and safety standards are specifically met as required by law. The fishing industry would advocate that the CZM permit conditions for any dredge disposal sites in Washington require post season monitoring and if that monitoring is not done, no dumping in the site is allowed until that immediate post season disposal is carried out in order to protect the health and safety of the midwinter dangerous crab fishery and all mariners. Four more crab fishermen died recent winters at Coos Bay as a direct interaction of the dredge disposal over mounding near the entrance to the harbor accentuating that human health and safety be more strictly addressed. This past winter the crab fishing vessel Starking out of Astoria capsized and sank in the area proposed for the new Washington North Head Dredge Disposal Site, no lives were lost, but this marine casualty serves as a warning that the site is dangerous and that the mounding must be absolutely controlled. CZM permitting must be positive in maintenance of adequate controls on increasing disposal activity to levels commensurate with fishing safety a higher standard than navigational safety.
- 4) The fishing vessel Starking casualty during crab season this past winter also poses significant safety RISK for any LCSG scientific investigations this year or future nearshore dumping in the area of the sunken vessel. Approximately 200 crab pots were dumped in a pile and never recovered with massive quantities of lines tangled together in the North Head Study area posing a threat to lost scientific instrumentation and or towed video equipment. The research vessel could also become seriously incapacitated with excessive amounts of rope sucked into the vessels main screw. The Starking’s protrusion above the bottom could also pose a significant SAFETY RISK to the dredge Essayons as well if the dredge collides with the vessel in these shallower waters. The Starking final resting place or how far above the bottom it extends is not currently known. Previously CRCFA warned of the barge sank on the bottom at the southern end of the North Head Site study location area and was found by the Corps so that dredge safety could be increased – human health and vessel safety is always a top priority of fishing industry representatives and wants that safety concern extended to our other LCSG friends at the USACE as well.



Last year scientific instruments were buried by sediments and much information lost as a result of underestimating effects of burial from excessive sediment suspension and movement compared to the South Jetty Site that CRCFA has attempted to warn of on multiple occasions and evidently not taken seriously enough to prevent loss of a valuable piece of scientific equipment. Any scientific instrumentation deployed in the area north of the North Jetty MUST be routinely monitored and information often downloaded and cannot be left for weeks at a time unattended which can occur south of the MCR. This is the second expensive monitoring device lost due to infrequent recovery of the instruments in this much more dynamic sediment laden environment north of the Columbia River Mouth. Lessons Learned from scientific study at the South Jetty Site will not automatically transfer to the North Head Site which is considerably more dynamic and under experiences the influence of the Columbia River Plume directly. Different study methods will need to be employed and pioneered to understand the dynamics associated with this much more energetic area of the ocean.

The fishing industry welcomes the continued improvement of the State/NOAA CZM approved program and sincerely encourages the program to include directly pertinent local authorities including the Pacific County SMP into the program as intended by both the Washington state legislature and congress.

These public comments were respectfully submitted by the Coalition of Coastal Fisheries and the Columbia River Crab Fisherman's Association after considerable review and reflection of multiple actions associated with this process over an extended number of years dealing successfully with real coastal marine spatial planning dating back over 40 years including but not limited to the crabber/towlane agreements where those vying for the same ocean space to operate have been able to find a way to Work Together and meet everyone's needs to use the waters in a common manner that is beneficial to all those parties concerned to Avoid Conflict and keep adverse impacts minimal as intended by the legislature before it was the vogue thing to do or mandated by legislation, but because it has always been the RIGHT thing to do in shared marine coastal waters of Washington state and beyond when everyone involved considers others needs without HARMING their competing interests. Fishing has been at the forefront of Coastal Marine Spatial Planning before the term even existed out of necessity to Save Fishing. Fishing acknowledges and thanks Washington Sea Grant for their continued leadership in making a real contribution to coastal planning twice a year convening honest industry to industry negotiations that are beneficial to all concerns.

Intentionally left blank



*Pacific County*  
**PROSECUTING ATTORNEY**  
 Mark McClain, Prosecutor

April 25, 2017

Fran Sant  
 Washington State Department of Ecology  
 PO Box 47600  
 Olympia, WA 98504-7600

RE: Shoreline Management Act Rules

Dear Ms. Sant,

I write on behalf of the Pacific County Board of County Commissioners, and the community members who have painstakingly participated in the development of Pacific County’s Shoreline Master Program (SMP) and, together, ask that the Department not amend WAC 173-27-060.

Pacific County spent a good deal of its very limited resources on the latest version of its SMP, now being reviewed by the Department of Ecology. We were proud of the amount of citizen participation in the process. We invest this effort because of our understanding of the statutory duties of the County and the Department. We understand Chapter 90.58 RCW as building the State’s shoreline management atop the foundation of the individual counties’ SMPs. We particularly appreciate being that foundation when state and federal shoreline management interests intersect.

Thus, the Commissioners were surprised to learn in recent meetings with constituent groups and stakeholders who actively engaged in the development of our SMP that the Department views the SMA and the SMP Guidelines as being the core enforceable policy and the County’s SMP as merely its local expression. We find no legal authority for that interpretation. In fact, RCW 90.58.030(3)(b) states that “[g]uidelines’ means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs.” *Emphasis added.* (3)(d) states that the “[s]tate master program’ is the cumulative total of all master programs approved or adopted by the department of ecology.” On its face, the statute says that the counties’ SMPs are the enforceable policies. This is particularly important to our County when federal agencies look to act, regulate, or de-regulate in our coastal waters. 16 U.S. C. 1456(c)(1)(A) requires federal agencies to act “in a manner that is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” Pacific County depends on a



healthy, well-regulated coastline. The fishing and tourist industries here are local, individual, and our continued interest and priorities are reflected in our SMP. As the only county that currently has an ocean section as a piece of our SMP, which, as a result, requires federal action in the Coastal Zone Management Act to be consistent with our local SMP. We believe this to be of critical importance to protect our community and we appreciate having State support protecting our citizens and their jobs.

Please do not change that by lessening our locally adopted SMP or the Act generally. And please let us know if the Department believes that our SMP is not itself an enforceable policy as contemplated by the Coastal Zone Management Act or the Shoreline Management Act.

Respectfully,

Mark McClain

CC: Maria Bellon  
Senator Dean Takko  
Representative Brian Blake  
Representative James Walsh