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Court of Appeals, Div. II Case No. 45887-0-II
Consolidated with Nos. 45947-7-II and 45957-4-II

SUPREME COURT OF THE STATE OF WASHINGTON

QUINAULT INDIAN NATION, FRIENDS OF GRAYS
HARBOR, SIERRA CLUB, GRAYS HARBOR AUDUBON, and
CITIZENS FOR A CLEAN HARBOR,

Petitioners,

v.

CITY OF HOQUIAM, WASHINGTON STATE DEPARTMENT
OF ECOLOGY, IMPERIUM TERMINAL SERVICES, LLC,
WESTWAY TERMINAL COMPANY, LLC, and WASHINGTON
SHORELINES HEARINGS BOARD,

Respondents.

PETITIONERS' SUPPLEMENTAL BRIEF

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 ORIGINAL

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INTRODUCTION

In response to the 1989 *Exxon Valdez* oil spill in Alaska, the 1988 *Nestucca* oil spill outside Grays Harbor, and the threat of federally-sanctioned oil leasing off the Washington Coast, the Legislature enacted the Ocean Resources Management Act (“ORMA”) to do two separate things: (1) ban oil extraction within the waters under Washington’s jurisdiction, and (2) provide substantive review criteria for all other activities that could harm Washington’s coast, its thriving marine life, and the people who depend on those ocean resources. Crude oil shipping terminals proposed in Grays Harbor could move staggering volumes of oil through Washington’s coastal waters every year, yet the Court of Appeals held that this unprecedented parade of oil tankers did not trigger evaluation under ORMA. Petitioners Quinault Indian Nation, Friends of Grays Harbor, Sierra Club, Grays Harbor Audubon, and Citizens for a Clean Harbor ask this Court to reverse to give meaning to ORMA’s plain language and important safeguards.

ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred when it ignored the text of the Ocean Resources Management Act, RCW 43.143, in holding that ORMA did not apply to proposed oil-shipping terminals and their associated vessels.

2. Whether the Court of Appeals erred when it interpreted ORMA's regulations, WAC 173-26-360, such that the proposed terminals, with their associated oil tankers and barges, were neither "ocean uses" nor "ocean transportation."

STATEMENT OF THE CASE

These proposed coastal oil shipping terminals exist only to receive oil by train, store it in large tanks, and ship it out via ocean-going vessels. They serve no other purpose and could not function without the ocean shipping component that will result in impacts to Washington's ocean coast, including navigation risks and the threat of an oil spill catastrophe. ORMA regulates proposals like these by ensuring that risky projects, defined by the statute as those that would "adversely impact" Washington's ocean coast, only move forward if they are justified, and, if so, only in the least environmentally harmful manner. The proposed projects fall squarely within ORMA's statutorily defined jurisdiction. However, the Court of Appeals erroneously held that ORMA did not apply, ignoring the statutory text and creating a restrictive new test for ORMA jurisdiction—requiring a project to have a "primary" ocean use. The Court of Appeals also ruled that these proposals to ship billions of gallons of oil by vessel were not "ocean transportation," even though ocean shipping of oil is called out explicitly in the regulations as

transportation. The Court should reverse and hold that these projects fall squarely within the statute and regulations.

I. STATUTORY AND REGULATORY FRAMEWORK

When the Legislature passed ORMA, it found that “Washington’s coastal waters, seabed, and shorelines are among the most valuable and fragile of its natural resources” but are “faced with conflicting use demands,” some of which “may pose unacceptable environmental or social risks at certain times.” RCW 43.143.005(1), (3). To address these unacceptable risks, the Legislature took a two-track approach. First, it banned leases for oil production in Washington’s jurisdictional waters. RCW 43.143.010(2). Second, for other risky activities, it established review criteria to evaluate and mitigate impacts. RCW 43.143.030; RCW 43.143.010(3). ORMA allows permitting only if “[t]here will be no likely long-term significant adverse impacts to coastal or marine resources or uses” and if “there is no reasonable alternative.” RCW 43.143.030(2)(b), (d). In this way, ORMA addressed (by banning) oil extraction and addressed (by regulating) other potentially harmful ocean activities.

The statute explicitly calls out Grays Harbor for protection and mandates that “[a]ll reasonable steps [be] taken to avoid and minimize adverse environmental impacts” to Grays Harbor’s marine life and resources. *Id.* at (2)(d).

The statutory jurisdiction for ORMA's review criteria is broad, applying to projects that will "adversely impact" Washington's coastal waters. RCW 43.143.030(2). Yet ORMA only applies to (1) Washington's four coastal counties, (2) projects that already require other permits, and (3) projects that were not in existence at the time of ORMA's passage. RCW 43.143.030(2); RCW 43.143.020; RCW 43.143.010(5).

ORMA's implementing regulations confirm ORMA's application to "ocean uses," which are "activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated [. . .] upland facilities." WAC 173-26-360(3). They also specifically regulate "transportation," which explicitly includes shipping oil. WAC 173-26-360(12).

II. THE CRUDE OIL SHIPMENT PROJECTS

The Westway and Imperium¹ proposals would ship huge volumes of crude oil each year. The companies propose to receive oil by trains, then briefly store it in tanks on the shore of Grays Harbor. Both proposals would transfer the oil from tanks to oil tankers and barges, resulting in up to 520 tanker and barge transits through Grays Harbor and Washington's

¹ Since the initial permit application, Imperium was purchased by Renewable Energy Group ("REG"). REG has disavowed crude oil shipping in a letter to Ecology, but Quinault is unaware of a formal application withdrawal.

open ocean per year. AR 124 (Westway MDNS at 2 (120 transits)); AR 228 (Imperium MDNS at 2 (400 transits)).²

III. PROCEDURAL HISTORY

In 2013, the City of Hoquiam and the Washington Department of Ecology issued mitigated determinations of non-significance (“MDNSs”) for Westway’s and Imperium’s oil terminal proposals, exempting them from full environmental and public health review under the State Environmental Policy Act (“SEPA”). AR 123-33 (Westway MDNS); AR 227-39 (Imperium MDNS). Hoquiam subsequently issued Shoreline Substantial Development Permits for both terminals. AR 59-68 (Westway SSDP); AR 216-26 (Imperium SSDP). Neither the companies nor the regulatory authorities evaluated the proposals under ORMA.

Petitioners appealed the Westway and Imperium MDNSs and Shorelines Permits to the Washington Shorelines Hearings Board. On November 12, 2013, the Board granted in part Petitioners’ summary judgment motions, ruling that Ecology and Hoquiam had failed to fully review and analyze the harmful cumulative effects of the oil terminal proposals in Grays Harbor. AR 2394-2411 (SHB Order at 16-33). The

² A third company, US Development Group, also applied for a permit to build an oil shipping terminal in Grays Harbor, but as it subsequently dropped its option to lease the proposed site, its future is uncertain.

Board reversed and remanded the permits. *Id.* at 2420-21 (SHB Order at 42-43).

In its ruling, however, the Board limited ORMA to “facilities directly engaged in resource exploration and extraction” and excluded these crude shipping projects. *Id.* at 2417-20 (SHB Order at 39-42). It also decided that ocean shipment of crude oil was not an “ocean use” or “transportation” under ORMA’s regulations because the proposals would not extract crude from Washington waters or transport oil drilled from beneath the ocean. *Id.* at 2418-19 (SHB Order at 40-41).

Petitioners appealed. On October 20, 2015, the Court of Appeals ruled that the “ocean use” regulatory definition required a “primary” ocean-related activity and that under this new interpretation, shipping a billion gallons of oil over Washington coastal waters did not qualify. The appellate court further found that the regulation pertaining to transportation did not apply to these projects. On April 27, 2016, this Court granted review pursuant to RAP 13.4(b).

ARGUMENT

The Court should reverse the decision of the Court of Appeals because by ignoring the statutory language and narrowing the regulatory definitions, the Court of Appeals stripped ORMA of effect and meaning. The Court of Appeals did not decide whether the movement of hundreds

of oil tankers and billions of gallons of oil through Grays Harbor and Washington's coastal waters would adversely impact Washington's ocean coast, the key to ORMA's statutory jurisdiction. Instead, the Court of Appeals skipped the language of the statute entirely. Looking solely at the regulations, the court created a new jurisdictional test, holding that ORMA only applies to activities with a "primary" ocean-based component. Courts may not interpret regulations to undermine the purpose of the statute, and, without reversal, the decision renders ORMA irrelevant and superfluous, applicable only to already-banned activities.³

I. ORMA'S PLAIN TEXT COVERS OIL SHIPMENT ALONG WASHINGTON'S OCEAN COAST

A. ORMA Broadly Includes Activities that "Adversely Impact" Washington's Coastal Resources

ORMA was part of a comprehensive legislative package to ban oil extraction, reduce oil spill risks, and address other risks to Washington's coast, titled "An Act Relating to oil spills and the transfer and safety of petroleum products across the marine waters of the state of Washington." Laws of 1989, 1st Ex. Sess., ch. 2 (Quinault Appellate Opening Br. App'x at 58). ORMA originally died in the Legislature, but it was revived, in part, because of "public outrage over the *Exxon Valdez* spill in Alaska."

³ This appeal is not moot since the application of ORMA is certain to arise in the next round of permitting, which is currently underway. Even if this issue were moot (which it is not), Washington courts may decide a moot issue if it "involves matters of continuing and substantial public interest." *Thomas v. Lehman*, 138 Wn. App. 618, 622 (2007).

Quinault Appellate Opening Br. App'x at 78 (Jim Simon, *Offshore-Oil Bill Takes on New Life—Senate Committee Reverses Action*, The Seattle Times, Apr. 14, 1989, at B3). ORMA was meant to prevent oil extraction, but it was also concerned with the threat of spills unrelated to extraction in Washington, like the *Exxon Valdez* and *Nestucca* incidents.

ORMA's legislative findings and plain language demonstrate an intent to balance all competing ocean uses—a far wider sweep than oil extraction alone. The Legislature found that Washington's ocean resources “are faced with conflicting use demands. Some uses may pose unacceptable environmental or social risks at certain times.” RCW 43.143.005(3). When conflicts between uses occur, “priority shall be given to resource uses and activities that will not adversely impact renewable resources.” RCW 43.143.010(3). In addition to creating an extraction ban, ORMA adopted permitting criteria for:

[u]ses or activities that [. . .] will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses

RCW 43.143.030(2). The key to determining whether ORMA applies to a project is whether the project “will adversely impact” Washington's coastal resources. *Id.* The legislative history confirms ORMA's checks as “the minimum standards which must be met before the state may support

any activities that are likely to have an adverse impact on” Washington’s ocean resources. Wn. Legis. Rept. of 1989 at 168, HB 2242 (Quinault Appellate Opening Br. App’x at 68) (emphasis added).

ORMA’s permitting restrictions are self-limiting. First, ORMA only applies to the four counties on Washington’s ocean coast; Grays Harbor appears to be the only major port covered by ORMA. RCW 43.143.030(1), (2); RCW 43.143.020. Second, ORMA does not regulate every boat that hits Washington water; it adds a layer of substantive review only to projects already being scrutinized under another permitting process. Third, ORMA only applies to projects that would have an adverse impact on Washington’s ocean coast. *Id.* That analysis is related to the “adversely affect” standard under SEPA that Ecology and local jurisdictions are familiar with and apply routinely. *See* WAC 173-26-360(7)(e). Finally, ORMA exempts some activities that existed at the time ORMA was passed such as commercial fishing. RCW 43.143.010(5).

B. These Projects Fit ORMA’s Plain Language

When a court interprets a statute, its fundamental objective is to carry out the intent of the Legislature. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9 (2002). If the statute’s meaning is plain on its face, the court’s inquiry ends there. *Id.* In discerning a statute’s plain meaning, a court looks to the language of the specific section or sentence

in question, to the purpose of the act, and to all related statutes or other provisions of the same act in which the provision is found. If, ultimately, a statute is subject to more than one reasonable interpretation, a court may look to the legislative history to ascertain legislative intent, *id.* at 12, which includes the circumstances leading up to and surrounding the statute's enactment, *Restaurant Dev., Inc. v. Cananwill*, 150 Wn.2d 674, 682 (2003). Courts also examine the historical context at the time of the statute's passage. *Washington State Nurses Ass'n v. Board of Medical Exam'rs*, 93 Wn.2d 117, 121 (1980).

ORMA covers activities that would “adversely impact” Washington’s ocean resources; that is the test the Legislature created. RCW 43.143.030(2). These oil projects would have uncontested adverse impacts on Washington’s ocean coast due to routine oil leaks and increased oil tanker traffic, in addition to the ever-present risk of a catastrophic oil spill. *See, e.g.*, AR 130 (Westway MDNS at 8) (acknowledging spill risk). In a worst-case scenario, a large oil spill would devastate the coast, its wildlife and plant life, and the people—such as members of the Quinault Indian Nation—who depend on Grays Harbor and Washington’s ocean coast for their livelihoods and cultural survival.

Additionally, these projects would hurt navigation; no other vessels can use the channel while a loaded vessel is in transit. *Id.* The

substantial increase in vessel traffic alone is an adverse impact to navigation and fishing, both activities ORMA explicitly protects. RCW 43.143.030(2). Given the tremendous evidence of impacts, the Court need not follow Respondents down the rabbit hole of evaluating how ORMA would or would not apply to projects with smaller impacts.⁴

Respondents attempt to constrain ORMA to fit their view of the federal Coastal Zone Management Act (“CZMA”) framework. *See, e.g.*, Ecology Review Opp. at 7-10. This is a rerun of the argument that ORMA only regulates extraction activities.⁵ ORMA is not totally subsumed by the CZMA; for example, ORMA only regulates four counties, RCW 43.143.020(1), whereas the CZMA program in Washington covers fifteen.⁶ ORMA (1) banned all extraction in Washington’s exclusive jurisdictional waters, and (2) demonstrated the clear intent to regulate other activities that adversely affect Washington’s waters. An example of ORMA’s non-extraction and non-CZMA reach is that it explicitly and

⁴ In its opposition to review by this Court, Ecology engaged in hyperbole to urge that for ORMA not to apply to everything, it must apply to nothing, even going as far as arguing that permits for houses could be covered by ORMA. Ecology Review Opp. at 12. Ecology’s argument ignores that it is highly unlikely that construction of a house would adversely affect Washington’s ocean resources. It would not be covered by ORMA any more than it would require an environmental impact statement under SEPA.

⁵ While the Shorelines Hearings Board limited ORMA by finding it only applied to oil extraction, AR 2417-20 (SHB Order at 39-42), the Court of Appeals did not decide the “extraction only” argument. Opinion at 13.

⁶ Washington Dept. of Ecology, *Managing Washington’s Coast* at 10 (Feb. 2001), available at <https://fortress.wa.gov/ecy/publications/documents/0006029.pdf>.

temporarily exempts recreational fishing, RCW 43.143.020(5), which would be superfluous if, as Ecology suggests, ORMA only applied to oil extraction activities. Additionally, while banning all oil extraction in Washington waters (up to three miles from the coast), RCW 43.143.010(2), ORMA provided review criteria for projects requiring “federal, state, or local government permits,” 43.143.030(2). The review criteria could never be applied to state or local permits if ORMA were only about extraction since that was banned in Washington waters. Respondents’ “extraction only” argument is wrong and renders much of ORMA superfluous and tangled.

The risk these projects pose to Grays Harbor and Washington’s coastal environment is the gravest seen in decades and falls squarely within ORMA’s statutory jurisdiction.

II. OIL SHIPPING IN GRAYS HARBOR FITS THE REGULATIONS’ PLAIN TEXT

The regulations do not, and cannot, narrow ORMA’s reach. *Kim v. Pollution Control Hearing Bd.*, 115 Wn. App. 157, 163 (2003) (rejecting notion that agency can alter plain meaning of a statute).

A. The Regulations’ Scope Is as Broad as the Statute

Far from narrowing ORMA, the regulations explain and give full effect to ORMA’s broad sweep. ORMA’s regulations cover “ocean uses,” which are defined as:

activities or developments involving
renewable and/or nonrenewable resources
that occur on Washington's coastal waters.

WAC 173-26-360(3). Ocean uses also include "associated [...] shoreland, and upland facilities." WAC 173-26-360(3). The regulations apply to activities involving renewable and/or nonrenewable resources and occurring on Washington's coastal waters. This is by definition the same scope as the statute since all activities that "adversely impact" will necessarily "involve" ocean resources.

B. The Projects Fall Within the Regulations' Broad Reach

The regulations restate the application of ORMA's substantive checks on projects involving Washington's ocean resources. WAC 173-26-360(3). "Ocean uses" can involve either renewable or nonrenewable resources and even cover more benign activities such as "pleasure craft activities" and recreational fishing. WAC 173-26-360(3). It would be contrary to the regulatory intent to exempt these proposals, with hundreds of ships and billions of gallons of oil that involve and put at risk Washington's coastal waters and Grays Harbor.

III. THE COURT OF APPEALS INCORRECTLY CREATED A NEW, NARROWING TEST

Rather than apply the statutory text of ORMA or ORMA's regulations, the Court of Appeals created a novel "primary ocean use" test, asking whether these projects are primarily based on land or are primarily

water-based. Opinion at 16. That reading creates a formalistic taxonomy that is unworkable in the context of an integrated project with many pieces without which the project cannot proceed—ocean shipping is an integral component that will occur daily as a result of these proposals.

In creating the new “primary ocean use” test, the Court of Appeals never asked whether these projects “adversely impact” Washington’s ocean coast (under ORMA) or whether they “involve” Washington’s ocean resources (under the regulations). Indeed, the Court of Appeals did not review ORMA’s text to apply it to these projects. Instead, the Court of Appeals skipped straight to the regulations, Opinion at 15, and adopted a view that narrows ORMA’s review provisions to meaninglessness. Even if the regulations included the “primary ocean use” test, of course, they cannot trump the statute,⁷ and the Court of Appeals should have examined these proposals under the statute first, particularly since it appeared to believe the regulations themselves may be invalid. Opinion at 16 n.8. Again, the regulations cannot validly narrow the activities the Legislature meant to include in ORMA. *See Dep’t of Labor & Indus. v. Gongyin*, 154 Wn.2d 38, 50 (2005).

⁷ *Kim v. Pollution Control Hearing Bd.*, 115 Wn. App. 157, 163 (2003) (rejecting notion that agency can alter plain meaning of a statute).

While these projects' loading and storage activities occur on land, an exclusive emphasis on this land-based aspect ignores the hundreds of associated yearly vessel trips. ORMA does not allow a reviewing court to close its eyes to the vessel trips or require it to find a separate "primary ocean use." By accepting Ecology's post hoc litigating position, the Court of Appeals' new "primary ocean use" test excuses projects from ORMA review that will admittedly harm Washington's ocean coast.

Indeed, the terms "water-based" and "land-based" do not appear in the regulations or statute. Westway, like the Court of Appeals, reads these terms into the regulatory structure, Westway Review Opp. at 5, creating a false dichotomy that does not exist in the text. The regulations cover activities that affect and involve Washington's ocean resources, without any categorization of land-based versus ocean-based. WAC 173-26-360(3).

But for the construction of these facilities, the parade of oil tankers will not call on Grays Harbor. The Court of Appeals' acceptance of the characterization of these projects as "land-based projects that have some marine transportation," Opinion at 16 (citing Ecology Appellate Br. at 25), is simply wrong. There is not "some" marine transportation involved here; the projects' very existence depends on marine transportation. Respondents also argue that the oil shipping vessels are not "owned or

operated” by Westway and Imperium, implying again that the vessels are somehow incidental to the project. Ecology Review Opp. at 10; Westway Review Opp. at 4. Ownership of the vessels is irrelevant and does not change the likely impacts; oil shipments over the ocean have been integral and expected all along, and they have been analyzed with the rest of the impacts. *See, e.g.*, AR 130 (Westway MDNS at 8) (describing mitigation to prevent vessel spills). The Court of Appeals’ decision is akin to characterizing an airport as a land-based project with “some” incidental use of the surrounding sky. In both cases, the terminals or airport would depend on—and only exist for—the ships or airplanes. Whether the airport or some third party owns the planes is irrelevant.

Nor does failure to previously apply ORMA to oil shipping excuse the legal violation here. The Court of Appeals did not address that argument, but as a federal appellate court noted when faced with similar reasoning, “a line must be drawn between according administrative interpretations deference and the proposition that administrative agencies are entitled to violate the law if they do it often enough.” *Wilderness Soc’y v. Morton*, 479 F.2d 842, 865 (1973). ORMA and its regulations should be applied as written.

IV. SHIPPING OIL BY OCEAN TANKER AND BARGE IS OCEAN TRANSPORTATION

A. ORMA's Regulations Apply to Transportation Uses

The Court of Appeals deferred to Ecology's litigating position that moving oil through Washington waters was not "ocean transportation."

The regulations define "ocean transportation" as:

[s]hipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports.

WAC 173-26-360(12). These regulations explicitly reference "shipping ... of oil," *id.*, and require that where feasible "hazardous materials such as oil [...] should not be transported through highly productive commercial, tribal, or recreational fishing areas." *Id.* at (12)(b).

In fact, the regulations foreshadow these proposals, which would do just that: ship oil through highly productive tribal and commercial fishing areas. The Court of Appeals, however, found that these projects were not "ocean transportation" because they were not related to a "primary ocean use," an incorrect conclusion discussed above. Nothing in the regulations requires an independent ocean use for the regulation of ocean transportation, which will necessarily "involve" Washington's coastal ocean waters and will always themselves be "ocean uses." The structure of the regulations reinforces the text. The regulations cover activities such as mining, disposal, ocean research, and salvage with no

indication that there must be some other associated ocean use, WAC 173-26-360(9), (11), (13), (14); transportation is no different, WAC 173-26-360(12).

B. The Ocean Transportation Here Originates in Washington's Coastal Waters

The appellate court also believed that application of the regulation depended on the origin of the oil itself, rather than the starting place of the ocean shipments. Opinion at 17-21. The regulations cover “transportation activities that originate or conclude in Washington’s coastal waters.” WAC 173-26-360(12). While the crude would be moved by rail before vessel, it is undisputed that the ocean transportation originates in Washington at the Port of Grays Harbor. The phrase “originates or concludes in Washington’s coastal waters” exempts vessels passing through Washington’s coast without a stop, a far different scenario from the intensive oil loading and shipping activities proposed here.

Additionally, holding that “originate in Washington” means the oil must be pumped from Washington’s waters narrows the regulations, once again, to independently banned extraction activities. RCW 43.143.010(2). It also violates the cannon of construction that requires different words to be accorded different meaning. The regulations apply to “transportation activities that [1] originate or conclude in Washington’s coastal waters or

[2] are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.” WAC 173-26-360(12) (numbering added). The second part of the definition is about extraction in federal jurisdictional waters, and if the first part of the definition were also only about extraction, Ecology should have used the word “extraction” rather than the broader and different term “originate.” *See State v. Roggenkamp*, 153 Wn.2d 614, 626 (2005) (“Because the legislature chose different terms, we must recognize that a different meaning was intended by each term.”).

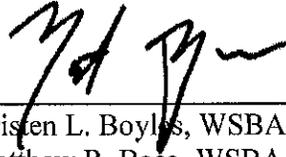
On these points, the Court of Appeals gave “‘great weight’ to [Ecology’s] interpretation.” Opinion at 19. Yet Ecology has never offered a rule, past application, or even interpretive guidance on the “ocean transportation” section. Until this litigation, Ecology has been silent, offering less even than the interpretive article this Court declined to defer to in *W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*, 140 Wn.2d 599, 611-12 (2000) (declining “to give deference to a short article in an agency bulletin that lacks an official, definitive analysis”). Ecology’s argument is simply a post hoc litigation position and rationalization, which courts do not accord “great weight.” *See, e.g., Martin v. Occupational Safety and Health Review Comm’n*, 499 U.S. 144, 156-57 (1991).

Finally, while the Court of Appeals expressed concern about creating “unintended results” and a “large, new administrative burden,” Opinion at 20-21, it cited, once again, only legislative statements focused on oil extraction. ORMA is about more. The court was bound to give life to all of ORMA’s provisions, including the overarching policy protections for “Washington’s coastal waters, seabed, and shorelines [that] are among the most valuable and fragile of its natural resources.” RCW 43.143.005(1).

CONCLUSION

For the reasons stated above, Petitioners ask the Court to declare ORMA applicable to the Westway and Imperium proposals, reverse the Court of Appeals’ opinion, and remand for application of ORMA’s basic protections for Grays Harbor.

Respectfully submitted this 27th day of June, 2016.



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STATUTORY AND REGULATORY
APPENDIX

Chapter 43.143 RCW**OCEAN RESOURCES MANAGEMENT ACT****Chapter Listing | RCW Dispositions****RCW Sections**

43.143.005 Legislative findings.

43.143.010 Legislative policy and intent -- Moratorium on leases for oil and gas exploration, development, or production -- Appeals from regulation of recreational uses -- Participation in federal ocean and marine resource decisions.

43.143.020 Definitions.

43.143.030 Planning and project review criteria.

43.143.050 Washington coastal marine advisory council.

43.143.060 Washington coastal marine advisory council -- Duties.

43.143.900 Captions not law.

43.143.901 Short title.

43.143.902 Severability -- 1989 1st ex.s. c 2.

Notes:

Oil or gas exploration in marine waters: RCW **90.58.550**.

Transport of petroleum products or hazardous substances: Chapter **88.40** RCW.

43.143.005**Legislative findings.**

(1) Washington's coastal waters, seabed, and shorelines are among the most valuable and fragile of its natural resources.

(2) Ocean and marine-based industries and activities, such as fishing, aquaculture, tourism, and marine transportation have played a major role in the history of the state and will continue to be important in the future.

(3) Washington's coastal waters, seabed, and shorelines are faced with conflicting use demands. Some uses may pose unacceptable environmental or social risks at certain times.

(4) The state of Washington has primary jurisdiction over the management of coastal and ocean natural resources within three miles of its coastline. From three miles seaward to the boundary of the two hundred mile exclusive economic zone, the United States federal government has primary jurisdiction. Since protection, conservation, and development of the natural resources in the exclusive economic zone directly affect Washington's economy and environment, the state has an inherent interest in how these resources are managed.

[1997 c 152 § 1; 1989 1st ex.s. c 2 § 8.]

43.143.010

Legislative policy and intent — Moratorium on leases for oil and gas exploration, development, or production — Appeals from regulation of recreational uses — Participation in federal ocean and marine resource decisions.

(1) The purpose of this chapter is to articulate policies and establish guidelines for the exercise of state and local management authority over Washington's coastal waters, seabed, and shorelines.

(2) There shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.

(3) When conflicts arise among uses and activities, priority shall be given to resource uses and activities that will not adversely impact renewable resources over uses which are likely to have an adverse impact on renewable resources.

(4) It is the policy of the state of Washington to actively encourage the conservation of liquid fossil fuels, and to explore available methods of encouraging such conservation.

(5) It is not currently the intent of the legislature to include recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources within the uses and activities which must meet the planning and review criteria set forth in RCW 43.143.030. It is not the intent of the legislature, however, to permanently exclude these uses from the requirements of RCW 43.143.030. If information becomes available which indicates that such uses should reasonably be covered by the requirements of RCW 43.143.030, the permitting government or agency may require compliance with those requirements, and appeals of that decision shall be handled through the established appeals procedure for that permit or approval.

(6) The state shall participate in federal ocean and marine resource decisions to the fullest extent possible to ensure that the decisions are consistent with the state's policy concerning the use of those resources.

[1997 c 152 § 2; 1995 c 339 § 1; 1989 1st ex.s. c 2 § 9.]

43.143.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this

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chapter:

(1) "Coastal counties" means Clallam, Jefferson, Grays Harbor, and Pacific counties.

(2) "Coastal waters" means the waters of the Pacific Ocean seaward from Cape Flattery south to Cape Disappointment, from mean high tide seaward two hundred miles.

[1989 1st ex.s. c 2 § 10.]

43.143.030

Planning and project review criteria.

(1) When the state of Washington and local governments develop plans for the management, conservation, use, or development of natural resources in Washington's coastal waters, the policies in RCW 43.143.010 shall guide the decision-making process.

(2) Uses or activities that require federal, state, or local government permits or other approvals and that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses, may be permitted only if the criteria below are met or exceeded:

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia river, Willapa Bay and Grays Harbor estuaries, and Olympic national park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

[1989 1st ex.s. c 2 § 11.]

43.143.050**Washington coastal marine advisory council.**

(1) The Washington coastal marine advisory council is established in the executive office of the governor to fulfill the duties outlined in RCW 43.143.060.

(2)(a) Voting members of the Washington coastal marine advisory council shall be appointed by the governor or the governor's designee. The council consists of the following voting members:

(i) The governor or the governor's designee;

(ii) The director or commissioner, or the director's or commissioner's designee, of the following agencies:

(A) The department of ecology;

(B) The department of natural resources;

(C) The department of fish and wildlife;

(D) The state parks and recreation commission;

(E) The department of commerce; and

(F) Washington sea grant;

(iii) The following members of the Washington coastal marine advisory council established by the department of ecology and as existing on January 15, 2013:

(A) One citizen from a coastal community;

(B) Two persons representing coastal commercial fishing;

(C) One representative from a coastal conservation group;

(D) One representative from a coastal economic development group;

(E) One representative from an educational institution;

(F) Two representatives from energy industries or organizations, one of which must be from the coast;

(G) One person representing coastal recreation;

(H) One person representing coastal recreational fishing;

(I) One person representing coastal shellfish aquaculture;

(J) One representative from the coastal shipping industry;

(K) One representative from a science organization;

(L) One representative from the coastal Washington sustainable salmon partnership;

(M) One representative from a coastal port; and

(N) One representative from each outer coast marine resources committee, to be selected by the marine resources committee.

(b) The Washington coastal marine advisory council shall adopt bylaws and operating procedures that may be modified from time to time by the council.

(3) The Washington coastal marine advisory council may invite state, tribal, local governments, federal agencies, scientific experts, and others with responsibility for the study and management of coastal and ocean resources or regulation of coastal and ocean activities to designate a liaison to the council to attend council meetings, respond to council requests for technical and policy information, perform collaborative research, and review any draft materials prepared by the council. The council may also invite representatives from other coastal states or Canadian provinces to participate, when appropriate, as nonvoting members.

(4) The chair of the Washington coastal marine advisory council must be nominated and elected by a majority of councilmembers. The term of the chair is one year, and the position is eligible for reelection. The agenda for each meeting must be developed as a collaborative process by councilmembers.

(5) The term of office of each member appointed by the governor is four years. Members are eligible for reappointment.

(6) The Washington coastal marine advisory council shall utilize a consensus approach to decision making. The council may put a decision to a vote among councilmembers, in the event that consensus cannot be reached. The council must include in its bylaws guidelines describing how consensus works and when a lack of consensus among councilmembers will trigger a vote.

(7) Consistent with available resources, the Washington coastal marine advisory council may hire a neutral convener to assist in the performance of the council's duties, including but not limited to the dissemination of information to all parties, facilitating selected tasks as requested by the councilmembers, and facilitation of setting meeting agendas.

(8) The department of ecology shall provide administrative and primary staff support for the Washington coastal marine advisory council.

(9) The Washington coastal marine advisory council must meet at least twice each year or as needed.

(10) A majority of the members of the Washington coastal marine advisory council constitutes a quorum for the transaction of business.

[2013 c 318 § 1.]

43.143.060

Washington coastal marine advisory council — Duties.

(1) The duties of the Washington coastal marine advisory council established in RCW **43.143.050** are to:

(a) Serve as a forum for communication concerning coastal waters issues, including issues related to: Resource management; shellfish aquaculture; marine and coastal hazards; ocean energy; open ocean aquaculture; coastal waters research; education; and other coastal marine-related issues.

(b) Serve as a point of contact for, and collaborate with, the federal government, regional entities, and other state governments regarding coastal waters issues.

(c) Provide a forum to discuss coastal waters resource policy, planning, and management issues; provide either recommendations or modifications, or both, of principles, and, when appropriate, mediate disagreements.

(d) Serve as an interagency resource to respond to issues facing coastal communities and coastal waters resources in a collaborative manner.

(e) Identify and pursue public and private funding opportunities for the programs and activities of the council and for relevant programs and activities of member entities.

(f) Provide recommendations to the governor, the legislature, and state and local agencies on specific coastal waters resource management issues, including:

(i) Annual recommendations regarding coastal marine spatial planning expenditures and projects, including uses of the marine resources stewardship trust account created in RCW **43.372.070**;

(ii) Principles and standards required for emerging new coastal uses;

(iii) Data gaps and opportunities for scientific research addressing coastal waters resource management issues;

(iv) Implementation of Washington's ocean action plan 2006;

(v) Development and implementation of coast-wide goals and strategies, including marine spatial

planning; and

(vi) A coastal perspective regarding cross-boundary coastal issues.

(2) In making recommendations under this section, the Washington coastal marine advisory council shall consider:

(a) The principles and policies articulated in Washington's ocean action plan; and

(b) The protection and preservation of existing sustainable uses for current and future generations, including economic stakeholders reliant on marine waters to stabilize the vitality of the coastal economy.

[2013 c 318 § 2.]

43.143.900

Captions not law.

Section captions as used in this chapter do not constitute any part of the law.

[1989 1st ex.s. c 2 § 18.]

43.143.901

Short title.

Sections 8 through 12 of this act shall constitute a new chapter in Title 43 RCW and may be known and cited as the ocean resources management act.

[1989 1st ex.s. c 2 § 19.]

43.143.902

Severability — 1989 1st ex.s. c 2.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 1st ex.s. c 2 § 20.]

WAC 173-26-360

Ocean management.

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

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

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

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

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

(5) Regional approach. The guidelines are intended to foster a regional perspective and

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

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

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

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

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

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

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

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

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

avoid and minimize adverse impacts.

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

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

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

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

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

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

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

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

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

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

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

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

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

(s) Special attention should be given to the effect that ocean use facilities will have on

recreational activities and experiences such as public access, aesthetics, and views.

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

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

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

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

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

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

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

(a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.

(b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.

(c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures, and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.

(d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.

(e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.

(f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements.

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

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

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach

erosion or accretion processes.

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

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

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

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

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

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

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

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

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

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW **90.58.120**, **90.58.200**, **90.58.060** and **43.21A.681**. WSR 11-05-064 (Order 10-07), § 173-26-360, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW **90.58.060** and **90.58.200**. WSR 00-24-031 (Order 95-17a), recodified as § 173-26-360, filed 11/29/00, effective 12/30/00. Statutory Authority: RCW **90.58.195**. WSR 91-10-033 (Order 91-08), § 173-16-064, filed 4/24/91, effective 5/25/91.]

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 92552-6

Court of Appeals No. 45887-0-II
Consolidated with Nos. 45947-7-II
and 45957-4-II

QUINAULT INDIAN NATION, FRIENDS OF GRAYS
HARBOR, SIERRA CLUB, GRAYS HARBOR AUDUBON, and
CITIZENS FOR A CLEAN HARBOR,

Petitioners,

v.

CITY OF HOQUIAM, WASHINGTON STATE DEPARTMENT
OF ECOLOGY, IMPERIUM TERMINAL SERVICES, LLC,
WESTWAY TERMINAL COMPANY, LLC, and WASHINGTON
SHORELINES HEARINGS BOARD,

Respondents.

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*Attorneys for Intervenor-Petitioner Imperium
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I, Eudora Powell, declare under penalty of perjury under the laws
of the state of Washington that the foregoing is true and correct.

Executed this 27th day of June, 2016, at Seattle, Washington.



EUDORA POWELL

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Subject: 92552-6 Quinault Indian Nation, et al. v. City of Hoquiam, et al.

Attached for filing regarding the above-referenced matter, is Petitioners' Supplemental Brief and Proof of Service. All parties are being served via email only.

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