Wake-Up Call: Using the Washington Shoreline Management Act to Protect the Shorelines of Puget Sound from High-Speed Vessel Wake Wash

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WAKE-UP CALL: USING THE WASHINGTON SHORELINE MANAGEMENT ACT TO PROTECT THE SHORELINES OF PUGET SOUND FROM HIGH-SPEED-VEssel WAKE WASH

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Abstract: Wake wash from high-speed vessels such as the Chinook passenger ferry accelerates erosion, destroys kelp and shellfish beds, and endangers recreational boaters in Puget Sound. The Washington Shoreline Management Act (SMA) grants the Washington State Department of Ecology (DOE) and local governments authority to regulate water uses in order to protect the shoreline environment. The federal Coastal Zone Management Act echoes this policy and mandates federal-state cooperation in the development and protection of the coastal zone. Although the U.S. Coast Guard traditionally regulates vessel traffic in Puget Sound pursuant to Title I of the Ports and Waterways Safety Act, the Coast Guard has failed to protect shorelines from the adverse environmental impacts of vessel wake wash. This Comment argues that the DOE and local governments should construe the SMA to authorize the regulation of vessel speed in Puget Sound to protect ecologically sensitive shorelines from destructive wake wash. This argument finds support in the text of the SMA, interpretations of its scope, the language and legislative history of the federal Coastal Zone Management Act, and the coastal zone management programs of other states. This Comment concludes that federal preemption rules protecting states' interests in fulfilling peculiar environmental needs suggest that Coast Guard speed regulations should not preempt vessel-speed regulations promulgated by the DOE and local governments pursuant to the SMA.

"The local community is more likely competent than the federal government to tailor environmental regulations to the ecological sensitivities of a particular area . . . ."1

The deployment of the Chinook high-speed passenger ferry has been highly controversial because high-speed-vessel wake wash2 threatens the shoreline environment of Puget Sound by causing erosion, destroying critical kelp and shellfish beds, and imperiling recreational boaters.3 In

May 1998, Washington State Ferries thrilled commuters when it introduced the $8.7 million Chinook, reducing the Bremerton-Seattle commute from one hour to thirty minutes. Kitsap County developers and Bremerton city officials celebrated the investment stimulated by the introduction of the Chinook. However, property owners along Rich Passage, a narrow channel extending from Bremerton to Orchard Point through which the Chinook traveled, soon complained that the Chinook's wake wash was eroding their shorelines, damaging their bulkheads, carrying away shellfish, and destroying kelp beds. In March 1999, they filed suit seeking injunctive relief and monetary damages.

While population and economic growth have fueled the demand for high-speed vessels worldwide, scientists and naval architects are still learning how to measure and mitigate the strength of high-speed-vessel wake wash that biomass and number of algae and invertebrate species were reduced on high-speed ferry routes; Nigel Warren, Wash—A Nuisance on Crowded Waterways, Ship & Boat Int'l, July–Aug. 1987, at 44 (observing that wake wash erodes valuable river banks and overturns rowing craft).


5. The City of Bremerton, Washington, is in Kitsap County.


8. See Complaint, supra note 7, at 24–25. See generally George Foster & Larry Lange, Washington Knew Denmark's Fast Ships Caused Wakes, Seattle Post-Intelligencer, Aug. 6, 1999, at A1 (finding that government authorities have studied and slowed high-speed ferries in Maine and British Columbia due to property owners' complaints of beach erosion, dock damage, and threats to recreational boaters, swimmers, and marine life).

In 1993, Washington State Ferries recognized that ecological sensitivity in Puget Sound consisted principally of sensitivity to vessel wake wash. It concluded that wake-wash energy in Rich Passage “should be held to a value that is relatively imperceptible to the ecosystem” to prevent erosion and the destruction of kelp and shellfish beds. Although Washington State Ferries attempted to incorporate a “no-harm” wake-wash standard into the Chinook’s design, subsequent undisputed studies revealed that in operation the Chinook’s wake wash exceeded this standard. In August 1999, the Kitsap County Superior Court ordered Washington State Ferries to slow the Chinook from thirty-five to twelve knots in Rich Passage and to prepare an environmental impact statement documenting the effect of the Chinook’s wake wash on the shoreline environment.

This Comment argues that despite the U.S. Coast Guard’s traditional jurisdiction over vessel traffic, the Washington State Department of Ecology (DOE) and local governments should construe the Washington Shoreline Management Act (SMA) to authorize the regulation of vessel speed to protect the shoreline ecology of Puget Sound from destructive vessel wake wash. Part I provides an overview of the SMA and judicial
interpretation of its scope, the federal Coastal Zone Management Act (CZMA), and Coast Guard authority over vessel speed pursuant to Title I of the Ports and Waterways Safety Act (PWSA). Part II discusses states’ roles in regulating navigation and the preemption of state regulations by federal regulations in this field of concurrent jurisdiction. Part III argues that the DOE and local governments should interpret the SMA to allow the regulation of vessel speed. The text of the SMA, administrative and judicial interpretations of its scope, the language and legislative history of the CZMA, and other states’ regulation of vessels pursuant to their coastal zone management programs support this argument. Finally, Part IV demonstrates why Coast Guard vessel-speed regulations should not preempt local vessel-speed regulations that address peculiar environmental concerns. This Comment concludes that to protect the shoreline environment of Puget Sound from high-speed-vessel wake wash, the DOE and local governments should construe the SMA to authorize the regulation of vessel speed and that Coast Guard regulations would not preempt these regulations.

I. THE ROLES OF WASHINGTON AND THE FEDERAL GOVERNMENT IN COASTAL ZONE MANAGEMENT AND VESSEL REGULATION

The Washington Shoreline Management Act (SMA)\(^6\) authorizes the Washington State Department of Ecology (DOE) and local governments to regulate activities in the shoreline environment.\(^7\) The federal Coastal Zone Management Act (CZMA)\(^8\) creates incentives for states to exercise greater control over their coastal zones\(^9\) through management plans such

Danish Maritime Auth., *Technical Investigation of Wake Wash from Fast Ferries* 11 (1996); Warren, *supra* note 3, at 44. Also, advocates in the high-speed-vessel industry argue that new vessel architectural designs rather than speed limits are the appropriate solution to wake-wash problems. See Warren, *supra* note 3, at 44; Optimar, Inc., *Minimizing Wake Wash* (visited Mar. 25, 2000) <http://www.optimar.com/wake.html>. While this Comment does not dispute this argument, regulating vessel speed is the most direct and immediate way to protect shoreline ecology.


19. *See* 16 U.S.C. § 1453(1) (defining coastal zone as “waters (including the lands... thereunder) and the adjacent shorelands”); *see also* 15 C.F.R. § 923.32 (defining water area to include state’s internal waters and setting seaward boundary at three nautical miles, outer limit of state title and ownership under Submerged Lands Act, 43 U.S.C. §§ 1301–1315 (1994)).

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as the SMA. Yet federal jurisdiction over vessels and navigation remains deeply rooted in federal law. Most relevant to this Comment is Title I of the Ports and Waterways Safety Act (PWSA), which grants authority to the U.S. Coast Guard to regulate vessel speed.

A. The Washington Shoreline Management Act of 1971

The SMA provides for the protection and responsible development of Washington’s shorelines. Local governments implement the SMA through locally administered programs designed to address local environmental needs. The Supreme Court of Washington has broadly construed the regulatory scope of these local programs, and the SMA recognizes the potential overlap of these programs with the jurisdiction of federal agencies.

1. Policy Mandates and Jurisdiction of the SMA

In 1971, the Washington legislature enacted the SMA to respond to concerns of both public environmental interests and private property developers. The legislature recognized the need to restore, preserve, and protect shoreline environments through coordinated federal, state, and local shoreline management. The legislature made the Washington

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State Department of Ecology (DOE) responsible for implementing and enforcing the SMA.25

The SMA has two principal policy objectives.26 First, the SMA protects land, vegetation, water, wildlife, and aquatic life by ensuring that permitted shoreline uses minimize ecological damage.27 For example, the SMA mandates strict regulation of types and intensities of activities that degrade the value of the shoreline environment or cause erosion.28 Second, the SMA protects navigational rights by minimizing any interference with the public use of the water.29 One way the SMA accomplishes this objective is by requiring that aquaculture activities in Puget Sound be designed and regulated to avoid interference with navigation.30 The SMA contains a clause mandating that the Act be "liberally construed to give full effect to the objectives and purposes for which it was enacted."31

The SMA covers both land and water areas. With limited exceptions, the Act defines "shorelines" as all water areas of the state, their underlying lands, and associated wetlands.32 In marine waters, the jurisdiction of the SMA extends to all inland waters and coastal waters three miles seaward from the coast.34 The landward jurisdiction of the SMA extends 200 feet from the ordinary high-water mark of each body of water.35

The SMA requires the DOE to protect and manage the waters of Puget Sound seaward from the line of extreme low tide because these

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33. The SMA does not define inland waters or coastal waters.
35. See id. at M-24.
waters are shorelines of "state-wide significance." The DOE may veto local regulations applicable to shorelines of state-wide significance and will approve such regulations only when it determines that the local program "provide[s] the optimum implementation of the policy of . . . [the SMA] to satisfy the state-wide interest." The SMA also requires the DOE and local governments to limit activities severely that increase erosion or detrimentally alter natural conditions on these shorelines. Finally, the SMA acknowledges the concurrent federal role in regulating shoreline uses and managing the coastal zone. It requires that when "federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies."

2. **Locally Administered Master Programs**

Under the SMA, local governments are primarily responsible for creating and administering regulatory programs to protect shoreline ecology. City and county governments must maintain a comprehensive inventory of the uses, projected uses, ownership patterns, and natural characteristics of their shorelines. Each local government uses this data to develop a master program that regulates shoreline uses consistent with DOE guidelines.

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43. See Wash. Rev. Code § 90.58.030(3)(b) (1998) (defining master program as "comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policy . . . [of the SMA]"). See generally Wash. Rev. Code § 90.58.100 (1998) (advising that local governments and DOE utilize all available environmental information and data in creating master program); Wash. Rev. Code §§ 90.58.120, .130 (1998) (mandating public hearings and comment periods during master-program development).

While the DOE mandates that local master programs include “all land and water uses” and assessments of their impact on the environment,45 its guidelines are intentionally broad to allow local governments to tailor regulations to particular local conditions.46 The DOE and local governments must periodically review these master programs and make necessary adjustments to accommodate changes in shoreline use.47 The DOE has set forth twenty-one categories of shoreline use to assist local governments in preparing local master programs.48

3. The Evolution of the Scope of Shoreline Use Regulations

The regulatory breadth of the SMA has evolved to encompass most shoreline use activities. Under the SMA, each local government exclusively administers a “development”49 permit system to regulate shoreline activities.50 A local government may grant a permit only when the proposed development is consistent with the local master program and the policy provisions of the SMA.51 Furthermore, no person may undertake a “substantial development”52 on the shorelines of the state.

46. See Wash. Admin. Code § 173-16-060 (1999). For example, the City of Bainbridge Island prohibited live-aboard vessels—vessels such as houseboats “licensed and designed for ‘use as... mobile structure[s] with adequate self-propulsion and steering equipment to be operated as... vessel[s], but... principally used as... over-water residence[s]’”—except in marinas, in response to complaints that these vessels discharged sewage directly into city waters and generated noise disturbing local residents. City of Bainbridge Island Shoreline Master Program, Jan. 1998, at 22, 72–73 [hereinafter Bainbridge Island Master Program]. See generally Karen Polinsky, Adrift? State to Bainbridge: ‘Live-Aboards’ Must Go, The Sun (Bremerton, Wash.), June 2, 1996, at B1. 47. See Wash. Rev. Code § 90.58.190(1) (1998).
49. A “development” is “a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of pilings; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters....” Wash. Rev. Code § 90.58.030(3)(d) (1998).
52. A “substantial development” is any development exceeding $2500 in cost or one that “materially interferes with the normal public use of the water or shorelines of the state.” Wash. Rev. Code § 90.58.030(3)(e) (1998). One might argue that the erosive force of vessel wake wash removes sand, and thus is a development. However, this argument is weak and necessitates justifying the procedural burden of having each vessel obtain a permit from each local jurisdiction through which it passes. See Wash. Rev. Code § 90.58.030(3)(d)–(e); infra note 53 and accompanying text.
before obtaining a local permit. Any party aggrieved by a decision to grant, deny, or rescind a permit may seek review from the Shorelines Hearings Board, the quasi-judicial body established by the SMA. Washington courts have broadly interpreted the definition of development to include shoreline uses not listed in the statute in order to uphold local regulatory efforts.

In addition, the Supreme Court of Washington has construed the SMA to authorize the DOE and local governments to regulate all shoreline uses and not just statutorily defined developments. In Clam Shacks of America, Inc. v. Skagit County, the plaintiff argued that because its clam-harvesting technique was not a development, the county's aquaculture-permit regulation exceeded the regulatory authority granted by the SMA. The court disagreed and held that the SMA authorizes local governments to regulate all shoreline uses. The court noted that walking and fishing are not developments but are shoreline uses that may be regulated. However, while the scope of SMA regulatory authority has evolved, no court or legislative or administrative body has explicitly construed the SMA to authorize the regulation of vessel speed.

B. The Federal Role in Coastal Zone Management and Navigation

Although the federal Coastal Zone Management Act (CZMA) articulates a national policy to protect the shoreline environment and makes states responsible for implementing this policy, the federal government has jurisdiction over, and a paramount interest in, navigation on the

55. See, e.g., Weyerhauser Co. v. King County, 91 Wash. 2d 721, 726–27, 592 P.2d 1108, 1112 (1979) (holding that logging-road construction includes “dumping” and “filling”); English Bay Enters. v. Island County, 89 Wash. 2d 16, 20, 568 P.2d 783, 785 (1977) (holding that clam-harvesting technique, which includes scooping up tideland material and sifting clams, is “dredging”).
57. See id. at 92, 743 P.2d at 266.
58. See id. at 96–97, 743 P.2d at 268–69.
59. See id. at 96, 743 P.2d at 268.
navigable waters\(^{60}\) of the United States.\(^{61}\) When a vessel obtains a federal license to engage in coastal trade, it has the right to navigate on navigable waters within the states.\(^{62}\) Even when Congress, pursuant to the Submerged Lands Act,\(^{63}\) granted states ownership and management authority over the lands and natural resources beneath their navigable waters, Congress retained federal authority to regulate navigation and to use and control these lands and waters solely for navigational purposes.\(^{64}\) Similarly, while the CZMA grants states greater authority over the coastal zone,\(^{65}\) it does not diminish federal jurisdiction over navigable waters and water resources.\(^{66}\)

1. The Federal Coastal Zone Management Act of 1972

Congress enacted the CZMA\(^{67}\) to address the increasing and competing demands on the coastal zones of the United States.\(^{68}\) The CZMA strives to balance the demands of ecological, cultural, and historical values with the needs of economic development to achieve prudent use of land and water resources.\(^{69}\) In particular, Congress sought to protect against "the loss of living marine resources, wildlife, nutrient-
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rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.\(^7\)

Through the CZMA, Congress endeavored to increase state control over coastal land and water uses.\(^7\) “Broad opportunities” for states to influence federal activities encourage states to voluntarily create coastal zone management programs pursuant to the CZMA.\(^7\) The Act calls for coordination and cooperation among federal, state, and local agencies in coastal zone management.\(^7\) Accordingly, the CZMA does not create a centralized federal program, but rather gives states the opportunity and financial resources to promulgate their own coastal zone management programs.\(^4\)

Although Congress has declined to specify all of the parameters of state management programs,\(^5\) the CZMA authorizes grants to help states develop management programs and to help implement and administer these programs.\(^6\) Before a state receives these funds, the Secretary of Commerce must approve the proposed state program.\(^7\) A state’s program must define “permissible land uses and water uses within the state’s coastal zone which have a direct and significant impact on the state’s coastal waters” and address other shoreline management issues.\(^8\)

At the same time, the CZMA recognizes that the activities of federal agencies, including the Department of Transportation, within which the

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74. Each state’s coastal zone management program is unique. States may set criteria and standards and allow local governments to develop and implement coastal programs. See 15 C.F.R. § 923.42(b)(2)–(c) (1999). Washington’s plan, comprised principally of the SMA, is such a plan. Also, a state may create its coastal zone management program by networking existing statutes. See 15 C.F.R. § 923.43 (1999); see also Florida Coastal Management Program (visited Mar. 25, 2000) <http://www.dca.state.fl.us/ffcm/FCMP/publication_information/progguide98/preface.htm> (describing Florida program as being comprised of 23 separate statutes).


77. See 16 U.S.C. § 1455(d).

78. 16 U.S.C. § 1455(d)(2); see 16 U.S.C. §§ 1454(a)–(b), 1455(d) (requiring state programs to include identification of coastal zone, inventory and designation of areas of particular concern, broad guidelines on use priorities, ways to control shoreline erosion, and other issues).
Coast Guard operates, may impact a state’s coastal zone.\textsuperscript{79} Thus, the Act provides federal agencies the opportunity to participate fully in the development and review of state coastal zone management programs.\textsuperscript{80} The Secretary of Commerce will not approve a state’s program unless the program considers the views of all relevant federal agencies.\textsuperscript{81} Similarly, if a state seeks to amend its coastal zone management program to change substantially the uses it manages, the state must involve federal agencies in the amendment process.\textsuperscript{82} A federal agency may delay the approval process by contesting the proposed amendment.\textsuperscript{83} Once the Secretary of Commerce approves a state’s coastal zone management program, federal agencies conducting or supporting activities affecting that state’s coastal zone must do so in a manner consistent, to the “maximum extent practicable,” with the enforceable policies of the approved state program.\textsuperscript{84} It is important to note that initial federal approval of a state coastal zone management program does not preclude federal preemption.\textsuperscript{85} Likewise, when a state proposes an amendment to its coastal zone management program, the Secretary of Commerce should approve the amendment only if the state program remains approvable after incorporating the proposed amendment and federal regulations do not preempt the proposed amendment.\textsuperscript{86} The participation of federal agencies in the program-development process helps to avoid future preemption issues.

\textsuperscript{80} See 16 U.S.C. § 1455(c)(1).
\textsuperscript{81} See 16 U.S.C. § 1456(b) (1994).
\textsuperscript{83} See 15 C.F.R. § 923.83 (1999).
\textsuperscript{84} 16 U.S.C. § 1456(a) (1994); 15 C.F.R. § 930.30 (1999); Wash. Admin. Code § 173-27-060(1) (1999). Thus, because the SMA largely comprises Washington’s federally approved coastal zone management program, anyone applying for a federal license or permit to conduct an activity affecting land or water uses in Washington’s coastal zone must provide documentation that the proposed plan complies with the SMA. See 16 U.S.C. § 1456(c)(3)(a) (1994); 15 C.F.R. § 930.50 (1999); Wash. Admin. Code § 173-27-060 (1999); see also Save Lake Wash. v. Frank, 641 F.2d 1330, 1337 (9th Cir. 1981).
2. Federal Regulation of Vessels Pursuant to Title I of the Ports and Waterways Safety Act

The same year as the CZMA, Congress enacted Title I of the Ports and Waterways Safety Act (PWSA)\(^87\) in response to safety concerns over increasing vessel traffic.\(^88\) Title I of the PWSA demands increased supervision of vessel and port operations to ensure that vessels comply with all applicable federal standards and to reduce the possibility of damage to life, property, or the marine environment.\(^89\) Title I of the PWSA authorizes the Secretary of the department in which the Coast Guard operates to establish, operate, and maintain measures for controlling or supervising vessel traffic, such as routing schemes, speed, and other operating restrictions.\(^90\) When the Coast Guard promulgates regulations pursuant to Title I of the PWSA, it must consider numerous factors including vessel traffic, port and waterway configurations, risk of accident, proximity of oil and gas drilling, and environmental impacts.\(^91\) However, the Coast Guard's authority to regulate pursuant to Title I of the PWSA is discretionary.\(^92\)

The Coast Guard has promulgated limited vessel-speed regulations for Puget Sound pursuant to Title I of the PWSA. Vessels in a traffic-separation scheme\(^93\) may not exceed eleven knots when transiting areas "where hazardous levels of vessel traffic congestion are deemed to

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\(^91\) See 33 U.S.C. § 1224(a) (1994); see also 33 U.S.C. § 1225(a) (1994) (authorizing Coast Guard to prevent damage to any shore area immediately adjacent to navigable waters and to protect waters and their resources from harm caused by vessels).

\(^92\) See 33 U.S.C. § 1223(a)(1) (stating that Secretary of Transportation, acting through Coast Guard, "may" regulate vessel traffic); see also Ray v. Atlantic Richfield Co., 435 U.S. 151, 169–70 (1978). In contrast, Title II of the PWSA mandates that the Coast Guard regulate. See 46 U.S.C. § 3306(a) (1994) (stating that Secretary of Transportation "shall" establish rules and regulations for vessel design, operation, and construction); see also United States v. Locke, 120 S. Ct. 1135, 1149 (2000).

\(^93\) See 33 C.F.R. § 167.5(a) (1999) (defining traffic-separation scheme as "designated routing measure which is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes").
Therefore, this speed limit applies only when, due to traffic conditions, the Coast Guard imposes a traffic-separation scheme. In addition, "[e]ach vessel operator is responsible for operating their vessel at a safe speed, especially in reduced visibility, and for the wake created by their vessel." Because this Comment advocates using the SMA to regulate vessel speed in Puget Sound, the existence of these federal speed regulations necessitates discussion of the relationship between state and federal vessel regulations.

II. THE RELATIONSHIP BETWEEN STATE AND FEDERAL VESSEL REGULATIONS

Judicial interpretation of the Supremacy Clause establishes that a state's police power is limited to the extent that federal law may preempt it. A state may use its police power to protect its shoreline environment by regulating vessels on navigable waters. Federally certified vessels must obey "reasonable, nondiscriminatory conservation and environmental protection measures" imposed by a state. However,
a federal agency such as the Coast Guard, acting through its rulemaking process, may preempt state and local laws and regulations.\textsuperscript{101}

In \textit{Ray v. Atlantic Richfield Co.},\textsuperscript{102} the U.S. Supreme Court articulated the preemption rule applicable to state regulations challenged under Title I of the PWSA.\textsuperscript{103} Title I of the PWSA does not preempt state regulations premised on "the peculiarities of local waters that call for special precautionary measures."\textsuperscript{104} States may adopt regulations when the Coast Guard has neither exercised its discretionary authority to regulate pursuant to Title I of the PWSA nor determined that no regulations are necessary or appropriate.\textsuperscript{105} Pursuant to conflict preemption analysis,\textsuperscript{106} state regulations are void to the extent that compliance with both state and federal regulations is impossible or when the state regulations impede the purposes and objectives of Congress.\textsuperscript{107} In addition, the Court has highlighted that when Congress establishes a scheme of federal-state cooperation, courts are less likely to find that federal regulations preempt state regulations.\textsuperscript{108} Accordingly, preemption analysis under Title I of the PWSA preserves the "historic role" of states in regulating local waters in "appropriate circumstances."\textsuperscript{109}

III. THE SMA SHOULD BE CONSTRUED TO AUTHORIZE THE REGULATION OF VESSEL SPEED IN PUGET SOUND

The text of the Shoreline Management Act (SMA) as well as judicial and administrative interpretations of its regulatory scope demonstrate that the Washington State Department of Ecology (DOE) and local governments should construe the SMA to authorize the regulation of


\textsuperscript{102} 435 U.S. 151 (1978).

\textsuperscript{103} See \textit{United States v. Locke}, 120 S. Ct. 1135, 1148–49 (2000) (interpreting \textit{Ray}).

\textsuperscript{104} \textit{Id.} at 1148 (quoting \textit{Ray}, 435 U.S. at 171).

\textsuperscript{105} \textit{Id.}; see also \textit{Ray}, 435 U.S. at 161–63.

\textsuperscript{106} In contrast, field preemption analysis applies to state regulations related to Title II of the PWSA. \textit{See Locke}, 120 S. Ct. at 1149 (holding that Congress has expressed intent to preclude any state regulation of subjects covered by Title II of PWSA because of need for national uniformity); \textit{see also Ray}, 435 U.S. at 161, 179–80.


\textsuperscript{109} \textit{Locke}, 120 S. Ct. at 1148.
vessel speed to protect the shoreline environment of Puget Sound from high-speed-vessel wake wash. Federal congressional intent, as reflected in the language and legislative history of the Coastal Zone Management Act (CZMA), also suggests that the DOE and local governments may, consistent with the CZMA, regulate vessel speed. Finally, the Secretary of Commerce's approval of other states' coastal zone management programs that include vessel regulations supports this conclusion.

A. The Text of the SMA and Interpretations of Its Scope Suggest That the DOE and Local Governments Should Construe the SMA to Authorize the Regulation of Vessel Speed

Although the SMA does not directly address the regulation of vessels or navigation, the DOE and local governments should construe it to authorize the regulation of vessel speed. This argument is premised on three considerations: (1) the SMA authorizes the regulation of all water uses in Puget Sound; (2) the DOE has demonstrated a willingness to regulate vessels pursuant to the SMA, and the Shorelines Hearings Board and Supreme Court of Washington have demonstrated a willingness to uphold such regulations; and (3) the liberal-construction clause, flexibility, and policy of the SMA all support the promulgation of local vessel-speed regulations in Puget Sound.

1. The DOE and Local Governments May Regulate Water Uses in Puget Sound

The DOE and local governments should regulate vessel speed pursuant to the SMA because a vessel's use of the waters of Puget Sound is within the jurisdiction of the SMA. Under the SMA, the waters of Puget Sound are shorelines.


111. See supra Part I.A.1–3. The DOE has ultimate authority over the waters of Puget Sound and should ensure that local governments neither enact unreasonably restrictive vessel-speed regulations nor sacrifice their shoreline environments to unfettered vessel traffic. See supra notes 36–39 and accompanying text.

developments. The Supreme Court of Washington should uphold vessel-speed regulations because the Chinook's seventeen daily trips through Rich Passage, a water use causing erosion and ecological damage, are analogous to walking, a land use.

The Supreme Court of Hawaii's interpretation of its coastal zone management program exemplifies how the DOE and local governments should construe the SMA to authorize the regulation of vessel speed in Puget Sound. Hawaii's coastal zone management program attempts to minimize adverse impacts to coastal ecosystems and vests significant planning and permitting authority with the county governments. The SMA is similarly structured. In Young v. Planning Commission, the Supreme Court of Hawaii held that when a commercial vessel owner expanded his fleet of whale-watching, fishing, and ferrying vessels, his activity was a "[c]hange in the intensity of use of water," and thus a development that required a permit. Likewise, the deployment of the Chinook has changed the intensity of the use of the waters of Puget Sound and has caused serious ecological damage. The Supreme Court of Washington's broad definition of shoreline uses in Clam Shacks is analogous to the Young court's interpretation of Hawaii's coastal zone management program. Therefore, the DOE and local governments should follow Hawaii's example and construe the SMA to

114. See Lange, supra note 4, at B1.
115. See supra note 7 and accompanying text. See generally Buechel v. Department of Ecology, 125 Wash. 2d 196, 210, 884 P.2d 910, 919 (1994) (holding that local governments may consider cumulative impact of all like developments when making permit determinations). The SMA does not distinguish between temporary and permanent shoreline uses. See Wash. Rev. Code § 90.58.030(3)(d) (1998) (defining development as any project of permanent or temporary nature that interferes with normal public use of surface of waters).
119. See supra Part I.A.1–3.
120. 974 P.2d 40 (Haw. 1999).
122. See supra notes 3, 7, and accompanying text.
123. See supra notes 56–58, 113, and accompanying text.
authorize the regulation of vessel speed to protect the shoreline environment.

2. Prior Decisions of the DOE, Shorelines Hearings Board, and Supreme Court of Washington Evidence That the SMA Authorizes the Regulation of Vessel Speed

The DOE’s willingness to regulate vessels pursuant to the SMA suggests that the DOE should approve local vessel-speed regulations. In the absence of explicit statutory language in the SMA authorizing the regulation of vessels, the DOE’s construction of the SMA should be given deference. The DOE approved the City of Bainbridge Island’s local master program regulation prohibiting live-aboard vessels from anchoring in city waters, except in marinas. While live-aboard vessels are distinct from federally licensed high-speed vessels such as the Chinook, the DOE’s approval of the City of Bainbridge Island’s regulation is a liberal administrative interpretation of the SMA and signals the DOE’s willingness to approve local vessel-speed regulations promulgated pursuant to the SMA.

In addition, decisions of the Shorelines Hearings Board—the body charged with adjudicating disputes under the SMA—suggest that the DOE and local governments should regulate vessel speed pursuant to the SMA. The Shorelines Hearings Board’s interpretation of the SMA is entitled to due deference. First, the Board has affirmed local development permit determinations based on the detrimental impact of motorized vessels on the shoreline environment. Second, the Board has held that Coast Guard licensing does not exempt a vessel from local

124. See Hama Hama Co. v. Shorelines Hearings Bd., 85 Wash. 2d 441, 448, 536 P.2d 157, 161 (1975) (holding that agency interpretation of ambiguous statute should be given deference).

125. In fact, the DOE insisted on this regulation. See Polinsky, supra note 46, at B1; see also supra notes 36–38 and accompanying text.

126. See Bainbridge Island Master Program, supra note 46, at 22, 72–73. This regulation was affirmed on appeal. See Gilpin v. Department of Ecology, No. 97-3-0003 (Central Puget Sound Growth Management Hearings Bd. 1997).

127. See supra note 54 and accompanying text.


regulation pursuant to the SMA. Third, the Board has concluded that local governments may employ development permits to regulate vessel operations. These rulings demonstrate the Shorelines Hearings Board’s recognition of the need to use the SMA to regulate vessels to protect the shoreline environment.

Similarly, the Supreme Court of Washington has interpreted the SMA to allow the regulation of movement on the water. In dicta in *Weden v. San Juan County*, the court reasoned that San Juan County’s personal watercraft ban was consistent with the SMA because the ban protected the shoreline environment from pollution, noise, and dangerous threats to marine and animal life. Although personal watercraft are distinct from commercial vessels, the *Weden* ruling evidences the court’s liberal interpretation of the SMA. This ruling and the decisions of the Shorelines Hearings Board, approving the use of the SMA to regulate vessels licensed by the Coast Guard, suggest that the Supreme Court of Washington should uphold local vessel-speed regulations promulgated pursuant to the SMA to protect shoreline ecology.

3. **The Liberal-Construction Clause, Flexibility, and Purpose of the SMA Show That the SMA Authorizes the Regulation of Vessel Speed**

Several aspects of the SMA demonstrate why the DOE and local governments should interpret the Act to authorize the regulation of vessel speed in Puget Sound to protect shoreline ecology. First, the text of the SMA calls for its liberal construction. Second, the flexible guidelines of the SMA recognize that new environmental protection measures will be necessary to account for changing shoreline uses. Third, regulating high-speed vessels pursuant to the SMA achieves its goals of protecting both the shoreline environment and navigational rights.


133. The City of Bainbridge Island’s shoreline master program, approved by the DOE, also prohibits personal watercraft and similar recreational equipment in certain aquatic environments. *See Bainbridge Island Master Program, supra note 46, at 86.*

134. *See Weden,* 135 Wash. 2d at 696, 958 P.2d at 282.
The text of the SMA mandates liberal construction of the Act to achieve its objectives and purposes, including the objective of protecting shoreline ecology from destructive high-speed-vessel wake wash. In upholding SMA jurisdiction over activities impacting the shoreline environment, the Supreme Court of Washington has consistently relied on this statutory directive. For example, in Clam Shacks, the court invoked the liberal-construction clause of the SMA and concluded that restricting local regulatory power to statutorily defined developments would frustrate the purpose of the SMA. Because the administrative regulations of the SMA explicitly direct the DOE and local governments to limit activities severely that increase erosion and detrimentally alter shoreline conditions in Puget Sound, the DOE and local governments should liberally construe the SMA to allow the regulation of high-speed vessels such as the Chinook that cause shoreline damage.

The DOE and local governments should construe the SMA to authorize the regulation of vessel speed in Puget Sound because the flexibility of the SMA administrative guidelines is intended both to accommodate local environmental conditions and to allow environmental protection to evolve with technology and science. For example, the City of Bainbridge Island largely prohibited live-aboard vessels pursuant to its initial shoreline master program, having learned of these vessels’ adverse environmental effects. Similarly, the SMA directs the DOE and local governments to review periodically their master programs to regulate new shoreline uses and make any adjustments necessary to advance the purpose of the SMA. Because newly deployed high-speed vessels such as the Chinook cause erosion, destroy critical shellfish and kelp-bed habitats, and threaten recreational boaters, the DOE and local governments should construe the SMA liberally to allow the regulation of high-speed vessels such as the Chinook that cause shoreline damage.

135. See supra notes 26–30 and accompanying text.
138. See supra notes 37–39 and accompanying text.
140. See Bainbridge Island Master Program, supra note 46, at 22, 72–73; Polinsky, supra note 46, at B1.
142. See supra notes 3, 7, and accompanying text.
governments should, pursuant to the SMA, review and update master programs to regulate this shoreline use.

Regulating vessel speed to reduce destructive wake wash in Puget Sound advances the principal policies of the SMA by protecting both the environment and public navigational rights. Local vessel-speed regulations achieve the environmental objective of the SMA by minimizing wake wash that accelerates erosion and injures critical marine habitats. These regulations do not deny navigational rights, but rather help define the parameters of those rights. In fact, these regulations actually increase public navigational rights by preventing the overturning of recreational boats. Accordingly, local vessel-speed regulations help achieve the twin goals of the SMA.

B. The Language and Legislative History of the CZMA and the Approval of Other States' Coastal Zone Management Programs Reflect Federal Intent for State Regulation of Navigation

The text of the CZMA evidences Congress’ finding that navigation places strains on coastal lands and waters that result in adverse changes to ecological systems such as shoreline erosion. The ecological damage caused by the Chinook’s wake wash powerfully supports this finding. In addition, the Senate Commerce Committee recommended in the legislative history to the CZMA that states include navigation as well as ecology, erosion, and other shoreline management issues in state programs. These statements evidence both Congress’ awareness of the relationship between vessel movement and environmental protection and its intent to allow state regulation in this area.

143. See supra notes 27–30 and accompanying text.
146. See Implementation Plan, supra note 3, at 3-4; Foster & Lange, supra note 8, at A1; Warren, supra note 3, at 44.
148. See supra notes 3, 7, and accompanying text.
At least one federal court has relied on the legislative history of the CZMA to uphold state authority to regulate navigation pursuant to a state coastal zone management program. In Murphy v. Department of Natural Resources, the plaintiff argued that Florida exceeded its authority pursuant to the CZMA when it, like the City of Bainbridge Island, regulated the mooring of houseboats. Citing the legislative history of the CZMA, the court held that states have authority under their coastal zone management programs to regulate vessel movement on the surface of the water.

Furthermore, by approving several state coastal zone management programs that incorporate vessel regulations, the Secretary of Commerce, with the Coast Guard’s input, has not per se precluded the DOE and local governments from regulating vessel speed in Puget Sound pursuant to the SMA. For example, Florida’s federally approved program requires a “discharge officer” to be onboard any vessel with storage capacity to carry 10,000 or more gallons of pollutant or fuel cargo operating in state waters. Alaska’s federally approved coastal zone management program incorporates a statute prohibiting tanker vessels from discharging ballast in state waters. The approval of these programs by the Secretary of Commerce evidences a broad administrative interpretation of the CZMA regarding the incorporation of vessel regulations in state programs, and thus supports the regulation of vessel speed pursuant to the SMA. However, the DOE and local governments may regulate vessel speed pursuant to the SMA only if federal

152. See id. at 1219.
153. See id. at 1223–24. But see People ex rel. San Francisco Bay Conservation & Dev. Comm’n v. Smith, 31 Cal. Rptr. 2d 488, 494 (Cal. Ct. App. 1994) (holding that although vessels used as residences required coastal zone management program permit, issue was whether vessels were moored for extended periods, not whether vessels were navigable).
154. See supra note 81 and accompanying text.
155. In order to regulate vessel speed in Puget Sound, Washington may need to amend its federally approved coastal zone management program. See supra notes 81–83 and accompanying text.
157. See Alaska Stat. § 46.03.750 (Michie 1998); see also 16 U.S.C. § 1456(f) (1994) (incorporating federal, state, and local regulations promulgated pursuant to Clean Water Act or Clean Air Act into state coastal zone management program). Alaska’s statute, passed pursuant to authority delegated by the Clean Water Act, was unsuccessfully challenged in Chevron U.S.A., Inc. v. Hammond, 726 F.2d 483, 501 (9th Cir. 1984).
158. See supra notes 82–83 and accompanying text.
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regulations do not undermine this authority by preemitting state regulations.

IV. COAST GUARD REGULATIONS SHOULD NOT PREEMPT LOCAL VESSEL-SPEED REGULATIONS PROMULGATED PURSUANT TO THE SMA

While the DOE and local governments may regulate vessel speed in Puget Sound pursuant to Washington's police power, Coast Guard vessel-speed regulations promulgated pursuant to Title I of the PWSA threaten to preempt these state regulations. Although the Coast Guard's regulations raise challenging questions, local vessel-speed regulations promulgated pursuant to the SMA to protect the shoreline environment from destructive high-speed-vessel wake wash should avoid preemption for four reasons: (1) the environmental peculiarities of Puget Sound demand protective measures; (2) the Coast Guard has not fully exercised its discretionary authority to regulate vessel speed in Puget Sound; (3) local vessel-speed regulations neither make compliance with Coast Guard regulations impossible nor impede the purposes of those regulations; and (4) the CZMA's vision of federal-state cooperation in

159. State regulation of vessels engaging in or impacting interstate commerce also merits dormant commerce clause analysis. See Barclays Bank PLC v. Franchise Tax Bd., 512 U.S. 298, 310 (1994) (holding dormant commerce clause limits state authority to inhibit flow of interstate commerce even when Congress has not acted); see also Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 443 (1960) (holding state regulation permissible in interstate commerce if it regulates evenhandedly, serves legitimate interest, and local benefits outweigh burden on interstate commerce). The nondiscriminatory character of local vessel-speed regulations and Washington's strong local interest in protecting its shoreline environment, an interest trumpeted by Congress in the CZMA, evidence that these regulations should pass dormant commerce clause scrutiny. See generally Norfolk S. Corp. v. Oberly, 822 F.2d 388, 407 (3d Cir. 1987) (upholding state's ban on offshore solid-bulk transfer facilities and finding that CZMA approval of state coastal zone management program does not insulate state's ban of Coast Guard-approved activity from dormant commerce clause scrutiny because Congress left competing-use decisions involving environmental protection and development to states).

160. See supra Part II; cf. Inlandboatmen's Union of the Pac. v. Department of Transp., 119 Wash. 2d 697, 700–08, 836 P.2d 823, 826–31 (1992) (holding state workplace safety regulations not preempted as applied to vessels in Washington State Ferries fleet, even though vessels were licensed, certified, and regulated by Coast Guard).

protecting the shoreline environment mitigates the possible preemption of local vessel-speed regulations.\textsuperscript{162}

A. The DOE and Local Governments May Regulate Vessel Speed Because the Environmental Peculiarities of Puget Sound Demand Special Protection

Local vessel-speed regulations promulgated pursuant to the SMA should avoid preemption because these regulations are tailored to the “peculiarities” and “idiosyncratic” natural characteristics of Puget Sound’s waterways.\textsuperscript{163} Ecological sensitivity in Puget Sound consists principally of sensitivity to vessel wake wash,\textsuperscript{164} which accelerates erosion and threatens juvenile salmon, kelp, and shellfish habitats.\textsuperscript{165} The environmental damage caused by the *Chinook* evidences the need for precautionary speed regulations.

Furthermore, Coast Guard regulations promulgated pursuant to Title I of the PWSA should not preempt local vessel-speed regulations because local speed regulations have “limited extraterritorial effect” beyond Puget Sound and do not require permanent or burdensome adjustments to vessels.\textsuperscript{166} The Coast Guard’s promulgation of dozens of pages of vessel traffic regulations for distinct bodies of water recognizes the peculiar needs of individual environments.\textsuperscript{167} The general speed rule in Puget Sound, making vessel operators responsible for operating their vessels at safe speeds,\textsuperscript{168} is inherently flexible to accommodate local conditions. Thus, because the DOE and local governments are “more likely competent than the federal government to tailor environmental regulations to the ecological sensitivities” of Puget Sound,\textsuperscript{169} local

\textsuperscript{162} See supra notes 104–08 and accompanying text. Cf. *In re Cleveland Tankers*, 67 F.3d 1200, 1205–06 (6th Cir. 1995) (using state and local vessel-speed regulations as basis for liability for property damage caused by high-speed-vessel wake wash).

\textsuperscript{163} United States v. Locke, 120 S. Ct. 1135, 1148 (2000).

\textsuperscript{164} See supra note 11.

\textsuperscript{165} See supra notes 3, 7, and accompanying text.

\textsuperscript{166} Locke, 120 S. Ct. at 1150 (stating that local rules are more justified if such rules do not affect vessels outside of local waterway and do not burden vessels within local waterway).

\textsuperscript{167} See 33 C.F.R. §§ 165.1–1708 (1999); see also *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 319 (1851) (noting that some issues “demand diversity, which alone can meet the local necessities of navigation”).

\textsuperscript{168} See supra note 96 and accompanying text.

\textsuperscript{169} Chevron U.S.A., Inc. v. Hammond, 726 F.2d 484, 493 (9th Cir. 1984).
vessel-speed regulations promulgated pursuant to the SMA should avoid preemption.

**B. The DOE and Local Governments May Regulate Vessel Speed Where the Coast Guard Has Not Exercised Its Discretionary Authority to Do So**

The DOE and local governments may promulgate speed regulations for vessels outside of a traffic-separation scheme in Puget Sound because the Coast Guard has neither regulated these vessels nor stated that no regulations are necessary. When the Coast Guard exercises its discretionary authority to regulate vessel speed or pronounces that no regulation is needed, states may not regulate vessel speed. In the absence of Coast Guard action, states may regulate. Thus, the DOE and local governments may regulate the speed of vessels outside of a traffic-separation scheme, such as the *Chinook*, because the Coast Guard's eleven-knot speed limit for vessels in a traffic-separation scheme does not apply to these vessels. Moreover, the Coast Guard's eleven-knot speed limit applies only during periods of heavy traffic congestion. Thus, the eleven-knot speed limit should preclude the DOE and local governments from regulating the speed of vessels within a traffic-separation scheme only when there is heavy traffic congestion in Puget Sound. This distinction, however, is currently inapposite because the eleven-knot speed limit is already lower than the twelve-knot speed limit considered necessary to protect ecologically sensitive areas such as Rich Passage from destructive vessel wake wash.

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170. See *supra* note 93.
172. See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 169–70 (1978); *see also supra* note 92 and accompanying text.
173. See *Barber v. Hawaii*, 42 F.3d 1185, 1191–70 (9th Cir. 1994); *Beveridge v. Lewis*, 939 F.2d 859, 864 (9th Cir. 1991).
174. See generally *supra* notes 94–96 and accompanying text.
175. See 33 C.F.R. § 165.1301(d) (1999).
176. See *supra* note 14 and accompanying text. In theory, one might argue that the current eleven-knot speed limit for vessels in a traffic-separation scheme should simply apply to all vessels. However, this Comment contends that the DOE and local governments have both the authority and local interest to protect particular shoreline environments from navigation's adverse effects.
C. Coast Guard Regulations Should Not Preempt Local Vessel-Speed Regulations Promulgated Pursuant to the SMA Because the Two Do Not Conflict

Pursuant to the SMA, the DOE and local governments may regulate vessel speed based on the peculiar environmental needs of Puget Sound unless the conflict between local regulations and federal regulations is so direct that compliance with both regulations is a "physical impossibility" or local regulations impede the purposes of Congress. As discussed above, the DOE and local governments may regulate the speed of vessels that do not participate in a traffic-separation scheme because these vessels are subject to no specific speed rules with which local speed regulations might conflict.

In theory it may be impossible for vessels operating within a traffic-separation scheme during periods of heavy traffic congestion to comply with both sets of speed regulations if the local speed regulation is lower. Yet, when a state standard is stricter than the federal standard, compliance with the federal standard is not necessarily a physical impossibility. Federal courts have upheld vessel regulations included in a state’s coastal zone management program even when these regulations appeared to make compliance with Coast Guard regulations impossible. For example, in Chevron U.S.A., Inc. v. Hammond, the Ninth Circuit upheld Alaska’s ban on ballast discharge despite Coast Guard approval of such activity in controlled circumstances. Likewise, in Norfolk Southern Corp. v. Oberly, although the Coast Guard permitted vessel-to-vessel coal exchange in Delaware Bay, the court upheld the state’s determination that such activity was banned under the

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179. See supra notes 94–96 and accompanying text.
181. In the present context, a state regulation that erodes a federal right granted by Coast Guard regulations may be construed as making compliance with both regulations impossible.
182. 726 F.2d 483 (9th Cir. 1984).
183. See id. at 500 (noting that while regulations may be financially burdensome and demand restructuring of vessels, burden does not justify finding of preemption).
state coastal zone management plan.185 These holdings illustrate that more stringent vessel-speed regulations promulgated by the DOE and local governments may be applicable to all vessels, including those currently subject to the Coast Guard’s eleven-knot speed limit.

Finally, local vessel-speed regulations should avoid preemption if they do not frustrate the Coast Guard’s objectives pursuant to Title I of the PWSA.186 The Coast Guard considers myriad factors in establishing local speed rules, including traffic safety, maneuverability, and volume, as well as the types, costs, and convenience of commercial vessels and their cargoes.187 While the Coast Guard generally considers environmental impacts when promulgating vessel traffic rules,188 these rules fail to address the cumulative ecological impacts of wake wash from routine vessel operations.189 In fact, the Coast Guard expressly considers traffic congestion and the danger of vessel collisions, not the needs of shoreline ecology, when it institutes the eleven-knot speed limit in Puget Sound.190 Nevertheless, local vessel-speed regulations must not thwart the Coast Guard’s objectives by causing traffic congestion and safety hazards when applied to vessels, particularly vessels in a traffic-separation scheme subject to the current eleven-knot speed limit.191

D. The CZMA’s Vision of Federal-State Cooperation Weighs Against Preemption of Local Vessel-speed Regulations Promulgated Pursuant to the SMA

Vessel-speed regulations promulgated by the DOE and local governments pursuant to the SMA should avoid preemption because the CZMA is a scheme of federal-state cooperation that delegates authority to states to carry out federal congressional environmental policy

185. See id. at 516–18; see also Norfolk S. Corp. v. Oberly, 632 F. Supp. 1225, 1252 (D. Del. 1986), aff’d, 822 F.2d 388 (3d Cir. 1987).
186. See supra Part I.B.2; supra note 107 and accompanying text.
189. See generally 33 C.F.R. §§ 177.07(0, .08 (1999) (regulating wake wave height in certain areas to mitigate impact of vessel wake wash, but not applying to federally licensed vessels in Puget Sound).
190. See 33 C.F.R. § 165.1301(d) (1999); see also supra notes 89–91 and accompanying text.
191. See generally City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 627–28, 637 (1973) (holding that city ordinance seeking to reduce noise pollution by disallowing jet aircraft from leaving airport at night is preempted because it increases air-traffic congestion, impairs safety, and frustrates objectives of Federal Aviation Administration).
mandates. Courts are hesitant to preempt local regulations promulgated pursuant to a scheme of federal-state cooperation. For example, the U.S. Supreme Court upheld a city’s emissions ordinance that effectively required the Coast Guard to redefine its boiler standards because the city acted pursuant to federal legislation granting states authority and funding to control air pollution. Similarly, in *Chevron*, the Ninth Circuit upheld Alaska’s ballast-discharge prohibition, even though it conflicted with Coast Guard regulations, because the state acted pursuant to the Clean Water Act. Therefore, the DOE and local governments may work toward the federal congressional goal of protecting shoreline ecology from the impacts of navigation by participating in the cooperative scheme of the CZMA and regulating vessel speed pursuant to the SMA.

Furthermore, the consistency provision of the CZMA weighs against preemption by facilitating the common environmental protection goals of the SMA, CZMA, and Coast Guard. The Coast Guard may contend that restructuring its licensing procedures to conform with more stringent vessel-speed regulations in each state’s coastal zone management program would be so burdensome as to impair its objectives pursuant to Title I of the PWSA. However, Title I of the PWSA recognizes the Coast Guard’s role in protecting the coastal environment from the adverse effects of navigation. Therefore, by protecting shoreline ecology from destructive high-speed-vessel wake wash, local vessel-speed regulations promulgated pursuant to state coastal zone management programs such as the SMA enable the Coast Guard to achieve more fully its regulatory objectives.

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192. See generally supra notes 76–82 and accompanying text.
196. See supra Part I.B.2; supra note 150 and accompanying text.
197. See supra note 84 and accompanying text.
198. See supra note 85 and accompanying text.
199. See supra note 62 and accompanying text.
201. See 33 U.S.C. § 1221(d), 1223(a).
V. CONCLUSION

As the Puget Sound region grows, Washington must balance economic development and environmental protection. The deployment of high-speed vessels such as the *Chinook* manifests the tension between these goals. To protect the shorelines of Puget Sound from destructive vessel wake wash, the DOE and local governments should construe the SMA to authorize the regulation of vessel speed. The text of the SMA and interpretations of its scope, the language and legislative history of the CZMA, and other states’ regulation of vessels pursuant to their coastal zone management programs support this construction of the SMA. Moreover, federal preemption rules protecting states’ interests in fulfilling peculiar environmental needs suggest that local vessel-speed regulations promulgated pursuant to the SMA should avoid preemption.

While Washingtonians may pursue compensation for property damage caused by high-speed-vessel wake wash, the shoreline ecology of Puget Sound may never recover. Whether local communities choose to enjoy the convenience and investment created by high-speed vessels or to slow these vessels until naval architects better learn to mitigate wake wash, the DOE is ultimately responsible for protecting the fragile ecological resources of Puget Sound. Therefore, the DOE and local communities should enter into this dialogue pursuant to the state environmental protection legislation enacted for precisely this purpose.