Oregon Territorial Sea Plan
Adopted 1994

PART ONE:
Ocean Management Framework

D. LAWS AND OTHER LEGAL AUTHORITIES AFFECTING OCEAN MANAGEMENT

Various state and federal agencies carry out many different laws that have been enacted over the years to govern the resources and activities in Oregon's ocean area. Bringing all these laws and programs together in a coordinated management framework is the task of the Ocean Policy Advisory Council through this Territorial Sea Plan. These laws are briefly described, followed by a discussion of the hierarchy among them. Although this section is intended to be complete, it is NOT a detailed or exhaustive listing of all agency programs and authorities.

NOTE: A summary of the AGENCIES that carry out these laws are listed in Section E.

1. State ocean-related laws

a. Ocean Resources Management Act of 1987/1991 (ORS 196.405 et seq)

NOTE: See ORS 196.405-196.515.

This Act is the legislative and policy framework for Oregon's Ocean Program. Enacted in 1987, it resulted in the Oregon Ocean Resources Management Plan, 1990. Amended in 1991, the Act sets legislative policy for ocean resource management, creates the Ocean Policy Advisory Council in the Office of the Governor, and mandates a plan for the Territorial Sea as part of Oregon's Coastal Management Program.

b. Statewide Land Use Planning (ORS 197.005 et seq)

Enacted in 1973, this law establishes Oregon's statewide land-use planning program including the Land Conservation and Development Commission, the statewide planning goals as mandatory standards, listing areas to be addressed by the goals, including "...recreational and outstanding scenic areas"; "beaches, dunes, coastal headlands and related areas"; and "unique wildlife habitat." State agencies are required to "carry out their planning duties, powers, and responsibilities and take actions...with respect to programs affecting land use in compliance with

(statewide planning) goals..." and to adopt a coordination program "to assure compliance with the goals..."

NOTE: The Land Conservation and Development Commission adopted Statewide Planning Goal 17, Coastal Shorelands, and 19, Ocean Resources, in 1977. Until the enactment of ORS 196 (above) and creation of the Ocean Resources Management Program in 1987, Goal 19 was the state's fundamental policy element related to ocean resources in Oregon's land-use planning program. This Territorial Sea Plan clarifies how Goal 19 will be implemented by government agencies.

c. Ocean Shores (Beach Bill) (ORS 390.605 et seq)

Oregon's "ocean shore" is defined in ORS 390.605 as "land lying between extreme low tide of the Pacific Ocean and the line of vegetation as established and described by ORS 390.770. This shore area, whether publicly-owned or part of the privately-owned 23 miles, is declared to be a "state recreation area" under the jurisdiction of the Parks and Recreation Department for public recreational purposes. A complicating fact is that the part of this strip of land "between ordinary high tide and extreme low tide" is under concurrent jurisdiction of the State Land Board and the Parks and Recreation Department. The 1991 Oregon legislature required that this "ocean shore" area be addressed in the Territorial Sea Plan along with the submerged lands lying seaward to three miles.

d. Submerged/Submersible Lands (ORS 274.005 et seq)

Submerged lands are defined as "lands lying below the line of ordinary low water... within the boundaries of the state...". Submersible lands are defined as "lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands...within the boundaries of this state...whether tidal or non-tidal." "Ordinary high and low water" means "annual mean high or mean low water of the preceding year." The Division of State Lands has "exclusive jurisdiction over all un-granted tidal submerged lands owned by the state" (ORS 274.710). "Un-granted" means that the bed or banks of the territorial sea have not been sold or otherwise conveyed out of public ownership.

e. Fish and Wildlife Laws (ORS 496 et seq)

These laws define "fish" and "wildlife," establish broad legislative policy regarding management of fish and wildlife, create and provide authority for the Department of Fish and Wildlife (ODFW) and its oversight Commission, and enact laws for threatened and endangered species. These laws give ODFW broad authority to develop fish and wildlife protection programs and perform actions necessary to carry out fish and wildlife laws. The ODFW has adopted general administrative rules about harvesting marine intertidal animals and has created "marine gardens" for certain intertidal areas where no taking of marine invertebrates is allowed.

f. Commercial Fishing (ORS 506.001-.405) and Developmental Fisheries (ORS 506.450-.465)

These statutes provide the Oregon Fish and Wildlife Commission with "exclusive jurisdiction over all fish, shellfish, and all other animals living intertidally on the bottom, within the waters of this state." Establishes food-fish management policy and creates authority for the commission to regulate commercial harvest of food fish. Establishes a developmental fisheries management program to plan the commercial development of underutilized food-fish species while protecting long-term sustainability of the commercial and biological values of those resources.

g. Kelp Leasing (ORS 274.885 et seq)

This law provides the Division of State Lands with exclusive jurisdiction over the state-owned tidal-submerged lands where kelp grows. Authorizes the Division to lease these lands "for the purpose of harvesting kelp and other seaweed after consultation with the State Fish and Wildlife Commission." There are some limitations on lease area, amount, and duration.

h. Threatened or Endangered Wildlife Species (ORS 496.172 et seq)

The Oregon Fish and Wildlife Commission is required to identify and establish programs to protect and conserve threatened and endangered wildlife species (ORS 496.172). Procedures and criteria are given for listing species under this law.

i. Marine Water Quality (ORS 468)

Discharge of pollutants into the waters of the state is prohibited. The term "waters of the state" is defined as including "the Pacific Ocean within the territorial limits of the State of Oregon." Numerous other provisions address controlling wastes, requiring certain practices, establishing effluent limitations and conditions, and setting water-quality standards generally.

j. Oil Spill Contingency Planning (ORS 468B.300)

This act requires an oil spill prevention and emergency response plan approved by the Department of Environmental Quality prior to the operation of onshore or offshore oil or gas facilities or operation of tanker, cargo, or passenger vessels in state waters of the Pacific Ocean, estuaries to the head of tide water, the Columbia River, and the Willamette River to Willamette Falls. This act includes legislative policy, provides the DEQ with authority to adopt standards for preparing contingency plans, and lists minimum requirements for such contingency plans. The act emphasizes coordination with the State of Washington and the United States Coast Guard, establishes an Oil Spill Prevention Fund, creates an Oregon coast safety committee, and establishes a wildlife rescue training program.

2. The Oregon Ocean Resources Management Plan (Ocean Plan)

NOTE: See Appendix G for a complete listing of all policies of the Oregon Ocean Plan.

a. Status and Scope

The Oregon Ocean Resources Management Plan (Ocean Plan) was adopted November 8, 1990, as part of Oregon's Coastal Management Program by the Oregon Land Conservation and Development Commission. The Ocean Plan was prepared pursuant to the requirements of state law by the Ocean Resources Management Task Force during the period 1987-1990. The Ocean Plan addresses ocean uses and resources across the entire continental margin and 200-mile U.S. Exclusive Economic Zone in both state and federal waters.

b. Principal Policies

The Ocean Plan created a broad policy framework for ocean management. It defined an "Ocean Stewardship Area" off Oregon, from the crest of the coast mountains seaward to the toe of the continental margin, within which Oregon asserts that it has direct concerns and ocean-resource management responsibilities. Within this area Oregon will apply policies and principles of conservation and marine habitat protection. The Ocean Plan also identified 33 "sensitive marine habitats" on offshore rocks and islands and shoreline cliffs where further work is needed to protect resources. The plan prohibits oil and gas development in state waters and lists a number of stringent conditions related to oil and gas activities in federal waters. The Ocean Plan recommended creation of an Ocean Policy Advisory Council and preparation of a plan for the territorial sea.

The Ocean Plan recognized the significance of Oregon's commercial and recreational ocean fisheries to coastal communities and their economies and identified "important fishery areas." The Ocean Plan included several policies related to ocean fisheries, including one to "conserve, protect and, where needed, enhance or restore marine habitats that are important to commercial and recreational fish species" and one to "oppose any uses of nonrenewable resources which [that] could adversely impact ocean fisheries."

c. Application to the Territorial Sea Plan

The Ocean Plan remains as part of the Oregon Coastal Management Program. The 1991 legislature specifically stated that the Territorial Sea Plan was to build from the policies and issues of the Ocean Plan. Thus the Ocean Plan is a larger framework document for the entire "Ocean Stewardship Area" within which the Territorial Sea Plan applies to the area of state jurisdiction. As policies in the Territorial Sea Plan are adopted, the Land Conservation and Development Commission may need to amend the Ocean Plan to replace or delete policies that the Territorial Sea Plan supersedes.

3. Statewide Planning Goals

Two statewide planning goals directly relate to the present Territorial Sea Plan: Goal 17, Coastal Shorelands, and Goal 19, Ocean Resources.

a. Goal 17, Coastal Shorelands

The Shorelands Goal aims to "...conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands..." while recognizing the diverse contributions that shorelands make such as protecting and maintaining water quality, providing fish and wildlife habitat, siting water-dependent uses for economic development, providing recreational opportunities, and the aesthetic or scenic qualities that define the coastal environment. The goal requires that "management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters."

The goal also seeks to "...reduce the hazard to human life and property..." and reduce the adverse effects on water quality and fish and wildlife habitat that can result from the use of Oregon's coastal shorelands.

The Shorelands Goal requires that: "inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide information on the nature, location, and extent of geologic and hydrologic hazards and shoreland values, including fish and wildlife habitat, water-dependent uses, economic resources, recreational uses and aesthetics in sufficient detail to establish a sound basis for land and water use management."

Coastal shorelands are defined as lands within 100 feet of the ocean shore as well as other lands around estuaries and coastal streams.

b. Goal 19, Ocean Resources

NOTE: This description of Goal 19 differs from the text of the Territorial Sea Plan published in 1994 because Goal 19 was amended December 1, 2000, by the Land Conservation and Development Commission.

The Ocean Resources Goal was adopted in 1977 and amended for the first time in 2000. The goal establishes that Oregon's primary ocean policy objectives are long term conservation-oriented the proper management of renewable resources is a top priority. The revised goal requires that

"…all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources--i.e., living marine organisms--than to the development of non-renewable ocean resources. policy elements."

The revised goal clearly asserts that Oregon's ocean management interests extend beyond state waters to an Ocean Stewardship Area that extends seaward to the toe of the continental margin. This is a policy assertion first articulated in the Oregon Ocean Resources Management Plan.

The revised goal clarifies the original requirement that agency decisions be based on information

by specific reference to the requirements in the Territorial Sea Plan for resource inventory and effects evaluation:

"*Prior to taking an action that is likely to affect ocean resources or uses of Oregon's territorial sea, state and federal agencies shall assess the reasonably foreseeable adverse effects of the action as required in the Oregon Territorial Sea Plan*."

And the revised goal also provides specific criteria, including definitions of *important marine habitat* and *important fishery areas* for evaluating whether an action complies with the goal.

4. Federal Laws

A number of federal laws pertain to Oregon's territorial sea. Two of these, the Coastal Zone Management Act and the Submerged Lands Act, establish a framework for management of Oregon's territorial sea. Others relate to specific resources, uses, and activities.

a. Clean Water Act (33 USC 1251 - 1375)

The Clean Water Act, administered by the US Environmental Protection Agency (EPA), is the most important law dealing with the quality of water in the United States, including marine waters. Under the Act, the EPA and the Oregon Department of Environmental Quality (DEQ) have an agreement that the DEQ regulates all point-source (e.g. a pipe) discharges into rivers, estuaries, and the ocean through the National Pollutant Discharge Elimination System (NPDES). Section 404 of the Act regulates the dumping of dredged materials and is administered by the US Army Corps of Engineers.

b. Coastal Zone Management Act (16 USC 1451 - 1464), amended

The 1972 Coastal Zone Management Act established a national program of coastal management that is carried out by coastal states through state coastal-management programs reviewed and approved by the Secretary of Commerce through NOAA, the National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resources Management. State programs approved as meeting federal guidelines become the operative management program within the state's coastal boundary. The law, with subsequent amendments, requires all federal actions or programs affecting a state's coastal zone to be consistent with the mandatory provisions of that state's program.

NOTE: In 1977, the Secretary of Commerce approved Oregon's Coastal Management Program, which was the second in the nation to be approved. Oregon's Coastal Zone extends from the crest of the Coast Range mountains (with two exceptions on the Rogue and Umpqua Rivers) seaward to the limits of state jurisdiction. Thus, after this Territorial Sea Plan is adopted by the Land Conservation and Development Commission and approved by NOAA/Commerce, it will become an official part of Oregon's federally approved Coastal Management Program.

c. Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 USC 9601 - 9657)

This Act, known as CERCLA, provides the framework for responding to all manner of hazardous-waste contingencies, including spills, leaks, disposal, or discharges of oil, chemicals, or other hazardous substances into the environment. The Act also provides for recovery of damages from injury or loss of natural resources. The Act authorizes the President to enter into cooperative agreements with states to take actions under this Act, including damage assessment and recovery.

d. Endangered Species Act of 1973 (16 USC 1531 - 1543)

The Endangered Species Act authorized the Secretaries of the Interior and Commerce to list all species determined to be endangered or threatened. "Endangered species" means "any species which [that] is in danger of extinction throughout all or a significant portion of its range." "Threatened species" means "any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act prohibits "take" (i.e. killing, harassing, hunting, etc.) and requires protective regulations and recovery plans for any listed species. The federal agencies may enter into agreements with states to develop and carry out conservation programs for such species. The Endangered Species Act refers to the commitments of the United States to various international agreements to conserve natural resources and wildlife.

e. Fish and Wildlife Act of 1956 (16 USC 742a - 742j-2)

The Fish and Wildlife Act created the US Fish and Wildlife Service within the Department of the Interior. The Act established legislative policy with regard to fish and wildlife resources. The duties and authorities of the US Fish and Wildlife Service are further described in other related laws such as the Fish and Wildlife Coordination Act (16 USC 661 - 666c)

f. Magnuson Fisheries Conservation and Management Act (16 USC 1801 - 1882)

Originally enacted in 1976, the Magnuson Fisheries Conservation Act is the legal framework for the United States to assert its management jurisdiction over fishery resources in the area from three to two hundred miles offshore. In addition to controlling the entry and activity of foreign fishing fleets, the Act created eight regional fishery-management areas, each governed by a council. States have representation on the Council. The Act generally preserves coastal state fisheries-management authority within the territorial sea unless a fishery within state waters is covered by a fishery management plan developed by the council or if the state's fishery program would, either by action or inaction, adversely affect a fishery in a fishery-management plan. Fishery-management plans must be approved by the Secretary of Commerce; implementation is through the National Marine Fisheries Service.

g. Marine Mammal Protection Act (16 USC 1361 - 1407)

The Marine Mammal Protection Act set up strict prohibitions against the taking, importation, or

possession of marine mammals or marine-mammal products. "Take" is defined as "harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Marine mammals include sea otters, polar bears, all cetaceans (whales), pinnipeds (seals and sea lions), and sirens (manatees and dugongs). Some "incidental take" is allowed in commercial-fishery operations. The act also created a Marine Mammal Commission and a Committee of Scientific Advisors on Marine Mammals. The US Fish and Wildlife Service (Department of the Interior) has jurisdiction over sea otters and polar bears; the National Marine Fisheries Service (Department of Commerce) has jurisdiction over all other marine mammals.

h. Marine Plastics Pollution Research and Control Act of 1987

This act implements an international agreement on ocean garbage titled Annex V of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships (known by word MARPOL). MARPOL is a primary impetus for ports in Oregon to provide garbage disposal and recycling facilities for vessels.

i. Marine Protection, Research and Sanctuaries Act (16 USC 1431 - 1434)

Title III of this act authorizes the Secretary of Commerce to designate marine areas that meet certain standards as National Marine Sanctuaries. The National Oceanic and Atmospheric Administration (NOAA) carries out the National Marine Sanctuary Program. There are no National Marine Sanctuaries off the Oregon coast, although the Heceta-Stonewall Banks complex at the outer edge of the Oregon continental margin has been identified as a potential sanctuary. There are five National Marine Sanctuaries on the Pacific Coast: the Olympic Coast NMS off the northern Washington coast, the Monterey Bay NMS in central California, the Gulf of the Farallones NMS and the adjacent Cordell Bank NMS off San Francisco Bay, and the Channel Islands NMS off southern California. A sanctuary can include state waters as well as federal.

j. Migratory Bird Conservation Act of 1929 (16 USC 715 - 715r)

This Act created a Migratory Bird Conservation Commission made up of the Secretaries of the Interior (chair), Agriculture, and Transportation; Congressional members; and ex-officio state members. The Commission approves the acquisition of land and water areas for sanctuaries, refuges, or other management purposes.

k. Migratory Bird Treaty Act of 1918 (16 USC 703 - 712) as amended

This landmark Act recognizes the importance of protecting migratory birds throughout their range and implements treaties with Canada (1916), Mexico (1936), Japan (1972), and the USSR (now Russia, in 1976) for protecting migratory birds. These treaties not only relate to hunting issues, but also to preservation of habitat on which birds depend. This Act is the basis for the Secretary of the Interior (through the U.S. Fish and Wildlife Service) to set and enforce hunting seasons and regulations for migratory birds on both public and private lands..

l. National Environmental Policy Act (42 USC 4321-4347)

Enacted in 1969 shortly after the first "Earth Day," this Act is the legal basis for requiring an Environmental Impact Statement for "major federal actions significantly affecting the quality of the human environment." The concept behind the law was one of a systematic and interdisciplinary approach to resource planning and decision making.

m. National Wildlife Refuge System Administration Act of 1966 (16 USC 668dd - 668ee) as amended

This Act created a National Wildlife Refuge System that includes wildlife refuges, wildlife ranges, wildlife management areas, and waterfowl production areas. The Secretary of the Interior (US Fish and Wildlife Service) is authorized to manage these areas and to permit uses that are compatible with the purposes of the established areas. This is the basic act authorizing the three National Wildlife Refuges in Oregon's territorial sea (see item s., below).

n. Ocean Dumping Act (33 USC 1401 - 1445)

Also known as Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), this act regulates ocean dumping of all types of materials, including dredged materials. The Act's 1988 amendments aim to end the ocean dumping of sewage sludge and industrial waste in the ocean. The EPA and the Corps administer this Act while NOAA is charged with ongoing research and monitoring.

o. Oil Pollution Act of 1990

Enacted in response to the Exxon Valdez oil spill, this act expands federal statutory liability for damages resulting from oil spilled or dumped into navigable waters. It also creates the Oil Spill Liability Trust Fund that may be used to compensate for injuries from spills. The Oil Pollution Act builds on CERCLA and CWA and contains many similar provisions.

p. Rivers and Harbors Appropriation Act of 1899

This authorizes the US Army Corps of Engineers to permit, authorize, or construct piers, dikes, jetties, or other structures within navigable waters of the United States or to excavate or place fill material in these navigable waters.

q. Submerged Lands Act (43 USC 1301 - 1315)

This 1953 Act legislatively established state ownership of all lands and natural resources "beneath navigable waters" within the boundaries of the state, which are defined as a line three geographical miles from "the coastline" which is defined as the line of "ordinary low water." This "ordinary" (also "mean" or "average") low-water line is the same line as that which, in state law, de-marks "submersible" (intertidal) and "submerged" (subtidal).

r. Wilderness Act of 1964 (16 USC 1131 - 1136)

The Wilderness Act of 1964 directs the Secretary of the Interior to review all roadless areas of certain sizes, all islands within the National Wildlife Refuge System regardless of size, and to recommend to Congress areas to be designated for formal protection and preservation as wilderness.

s. Laws Creating National Wildlife Refuge and Wilderness off Oregon 's Coast

- **Executive Order 699 (1907)** established Three Arch Rocks Reservation
- **Executive Order 5702 (1931)** protected additional refuge lands at T.A.R.
- **Executive Order 7035 (1935)** established Goat Island Reservation
- **Executive Order 7957 (1938)** created Cape Meares Migratory Bird Refuge
- **Executive Order 2416 (1940)** changed names to Three Arch Rocks N.W.R., Oregon Islands N.W.R., and Cape Meares N.W.R.
- **Public Land Order 4395 (1968)** added islands to Oregon Islands N.W.R.
- **Public Law 91-504 (1970)** "Oregon Islands Wilderness" status for Three Arch Rocks N.W.R. and Oregon Islands N.W.R.
- **Public Law 95-450 (1978)** added islands to Oregon Islands N.W.R. and designated additional "Oregon Islands Wilderness" lands
- **Public Land Order 6287 (1982)** added islands to Oregon Islands N.W.R.; designated some islands "Oregon Islands Wilderness"

5. International Law

The oceans cover about 71 percent of the Earth's surface and lap the shores of many nations. A rich and complicated fabric of international laws and agreements has grown over the centuries in response to the use of the oceans for transportation, warfare, food, chemicals, materials, research, and recreation. This web of international laws provides the framework for nations, such as the United States, and their political components, such as states, to manage ocean uses and resources.

The United States is a party to many international agreements related to the oceans, including the 1982 United Nations Convention on the Law of the Sea. Although the United States has yet acceded to the 1982 Convention because of objections to deep-seabed mineral provisions, the U.S. has been a party to all four of the 1958 Geneva Conventions on the Law of the Sea and generally recognizes as customary international law all provisions except for the deep-seabed provisions. States, in carrying out their governance authority for areas of the ocean under their jurisdiction, have a duty to comply with international law as part of U.S. law.

Thus, the Oregon Territorial Sea Plan is a governance instrument for affirmatively addressing these international agreements. The standards for evaluating ocean development proposals, the rocky shores goals and policies to protect marine biodiversity, and the conservation standards of Statewide Planning Goal 19 are all provisions that assist the United States to meet these

international obligations.

6. Status and Interests of Oregon Coast Indian Tribes

There are four federally-recognized tribes on the Oregon coast: the Confederated Tribes of the Grande Ronde; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw; the Coquille Tribe; and the Confederated Tribes of Siletz. These tribal governments encompass many smaller tribes and bands of Indians that originally inhabited western Oregon and the coast. Tribal status was terminated by the federal government in 1954 but Congressional action in the late 1970s and early 1980s restored federal tribal status to these and other Oregon Indian tribes.

While the federal restoration acts renewed the tribes' relationship with the federal government and renewed health and education benefits for tribal members, hunting or fishing rights were not restored to the tribes. The restoration acts expressly provided that "no hunting, fishing, or trapping rights of any nature of the tribe or of any member...are granted or restored..." Two of the tribes have negotiated agreements with the State of Oregon related to tribal hunting, fishing, trapping, and gathering rights. In 1980, the Confederated Tribes of Siletz, the state, and the federal government reached an agreement that specifies the terms and conditions under which the tribe and its members may hunt, fish, collect, or gather a variety of fish and wildlife resources including seaweed. Under this agreement, the gathering of sea anemones, rocky oysters, and saltwater mussels is subject to all applicable state law except that upon request of the tribe, the Department of Fish and Wildlife may issue special gathering permits to allow an opportunity for ceremonial and subsistence purposes. In 1986, the Confederated Tribes of Grande Ronde and the state entered into an agreement to permanently define the tribes' hunting, fishing, trapping, and gathering rights.

7. Hierarchy of Legal Authorities in the Territorial Sea

Numerous legal authorities apply to the management of ocean resources in Oregon's territorial sea, including state laws (e.g. ORS 196 and ORS 197), the Statewide Planning Goals (specifically Goal 19), the Ocean Resources Management Plan, this Territorial Sea Plan, other Oregon statutes that provide specific management authority to state agencies, and state agency rules and coordination programs. Federal laws also apply in the territorial sea and are a part of the mix of legal authorities. The implementers of these "laws" include OPAC, state agencies, local government, and federal agencies. This section seeks to describe the linkage or relationship of these "laws" to each other.

a. State Constitution

The Oregon Constitution is the basic legal framework for the State of Oregon, including the structure and authorities of the various branches of state government. The Constitution establishes a State Land Board of the Governor, Secretary of State, and State Treasurer, to "manage lands under its jurisdiction with the object of obtaining the greatest benefit for the

people of this State, consistent with the conservation of this resource under sound techniques of land management." Lands under its jurisdiction include all submerged and submersible lands in the Territorial Sea, estuaries, and navigable streams (see also Part I, D.1.d. Submerged/Submersible Lands).

b. Common Law and the Public Trust

Common law doctrines, such as the public trust doctrine or the doctrine of custom, may provide guidance concerning the public's rights within the territorial sea. Courts generally apply these doctrines to guarantee certain public rights such as recreation, commerce, or navigation. The public trust doctrine, in particular, provides an overarching basis for state ownership and management of resources and activities within the Territorial Sea. This doctrine, derived from English Common Law, traditionally holds that the state holds title to tidelands and navigable waters in trust for the benefit of the public, including navigation, fishing, bathing, swimming, boating, and general water-related recreational uses.

c. State Laws

As indicated in Figure 4, the relationship of the relevant "laws" is generally conceived of as a hierarchy. First, there are statutes the legislature enacts that provide substantive authority and mandates for natural-resource agencies. Aside from any applicable constitutional provision, these statutes sit at the top of the hierarchy. Overall laws for ocean management are ORS 196 and ORS 197.

d. Statewide Planning Goals

Next come the statewide planning goals, such as Goal 19, that the LCDC adopted at the direction of the legislature. They are considered "super rules" (as a result of specific court decisions) in that they govern if there is a conflict between the statewide planning goals and, for example, LCDC's other administrative rules. For ocean management in particular, it is also clear that these planning goals come next in the hierarchy because the law (ORS 196) states that LCDC can approve the Territorial Sea Plan only if it finds that the plan is consistent with the statewide planning goals, including Goal 19. Because of this requirement, it is clear that the Territorial Sea Plan (like the Ocean Resources Management Plan) is subordinate to Goal 19, at least to the extent that the plan must be consistent with the goal.

e. Ocean Plans

Ranking below state law and the statewide goals are Oregon's two ocean plans: the Ocean Resources Management Plan and the Territorial Sea Plan. This is because, by law, both plans must be consistent with the goals and state laws, including the original authorizing statute. A further complexity, however, is that unless the Ocean Plan is amended prior to the adoption of the Territorial Sea Plan, the Ocean Plan takes precedence and the Territorial Sea Plan must be consistent with it.

f. Agency Rules and Programs

Finally, agency rules and state-agency coordination programs are shown at the bottom of Figure 4. These rules and programs are adopted through rule making and guide the agency in carrying out day-to-day programs. Agency rules must be amended as changes occur in applicable agency statutes or the statewide goals.

8. Conflicts Among Legal Authorities

Although the foregoing describes a hierarchy, conflicts or uncertainties can, and undoubtedly will, arise between or among authorities. It should be emphasized that standard principles of statutory interpretation require that conflicts in law or other authority be resolved to give as much "effect" as possible to all of the authorities, rather than selecting one predominating authority.