Oregon Territorial Sea Plan
Adopted 1994

PART TWO:
Making Resource Use Decisions

***Part Two** of the Territorial Sea Plan describes the process for making decisions in the future about the use of Oregon's ocean resources. This part lays a very important foundation for consistently evaluating ocean resource proposals to determine whether they satisfy Oregon's ocean resource protection policies. Included in Part Two are requirements for resource inventory information, evaluating environmental effects, conducting small-scale environmental disturbances to seek new information, making the final resource use decision, Joint Review Panels, and a mandatory process for consulting with local coastal governments, including coastal Indian tribes.*

A. RESOURCE INVENTORY & EFFECTS EVALUATION

1. Context
Informed decision making, the heart of Goal 19 and the Ocean Plan, depends upon adequate information about ocean resources and uses and the effects of any proposed action on those resources and uses.

2. Mandatory Policies

a. Inventory/Evaluation Required

1.) Duty To Inventory and Evaluate. Prior to making any decision to conduct, approve, or fund any action that will occur within Oregon's territorial sea or the Rocky Shores Management area of the Territorial Sea Plan and that is related to or affects marine resources and uses in Oregon's territorial sea, an agency shall prepare, or cause to be prepared, a resource inventory and effects evaluation as required by this section.

2.) Sufficiency of Inventory and Evaluation. The resource inventory and effects evaluation shall be sufficient to understand the short-term and long-term effects of the proposed decision on the affected resources and uses.

b. Standards For Decision Making

Any government agency making decisions that relate to marine resources and uses in Oregon's territorial sea shall conform to the requirements of this Territorial Sea Plan; Oregon's ocean law; Statewide Planning Goal 19, Ocean Resources; and the policies of the Oregon Ocean Resources Management Plan, as well as any amendments by the Land Conservation and Development Commission upon recommendation from the Ocean Policy Advisory Council.

c. Inventory Content

At a minimum, the following factors shall be considered for inclusion in the inventory as appropriate to the magnitude, likelihood of effects, and the significance of potentially affected resources and uses:

1.) The proposed action:

(a) Location (using maps, charts, descriptions, etc.);

(b) Numbers and sizes of equipment, structures;

(c) Methods, techniques, activities to be used;

(d) Transportation and transmission modes needed to serve/support the proposed project;

(e) Materials to be disposed of and method of disposal;

(f) Physical and chemical properties of hazardous materials to be used or produced, if any;

(g) Navigation aids; and

(h) Proposed time schedule.

2.) Location and description of all affected areas, including areas for onshore support facilities.

3.) Physical and chemical conditions such as:

(a) Water depth;

(b) Wave regime;

(c) Current velocities;

(d) Dispersal, horizontal transport, and vertical mixing characteristics of the area;

(e) Meteorological conditions; and

(f) Water quality.

4.) Bathymetry (bottom topography).

5.) Geological structure and hazards.

6.) Biological features, including:

(a) Critical marine habitats (see Definitions);

(b) Other habitats important to the marine ecology, such as kelp and other algae beds, exposed seafloor gravel beds, seagrass beds, rocky reef areas, marine mammal rookeries and haulout areas, seabird rookeries, and areas where fish and shellfish congregate in large numbers;

(c) Fish and shellfish stocks and other biologically important species;

(d) Recreationally or commercially important finfish or shellfish species;

(e) Planktonic and benthic flora and fauna; and

(f) Other elements important to the primary productivity and the food chain.

7.) Mineral deposits, including sand, gravel and hydrocarbon resources.

8.) Cultural, economic, and social uses (present and projected) associated with the affected resources, such as:

(a) Commercial and sport fishing;

(b) Aquaculture;

(c) Scientific research;

(d) Ports, navigation, and DMD sites;

(e) Recreation;

(f) Tourism;

(g) Mineral extraction; and

(h) Waste discharge.

9.) Significant historical or archeological sites.

d. Effects Evaluation: Purpose & Content

The purpose of the effects evaluation is to determine whether the proposed action can meet the resource or user-protection standards referred to in Subsection 2.b, Standards For Decision-Making.

1.) Written Evaluation. The government agency shall use the inventory information or cause it to be used to write an evaluation of all reasonably foreseeable adverse effects of the proposed actions. Where relevant, the evaluation shall describe:

(a) The potential short-term and long-term effects on resources and uses of the continental shelf, the Oregon nearshore ocean, and onshore areas based on the following considerations:

i. Biological and ecological effects, including those on critical marine habitats and other habitats, and on the species those habitats support. Factors to consider include:

- The time frames/periods over which the effects and recovery will occur;
- The maintenance of ecosystem structure, biological
- productivity, biological diversity, and representative species assemblages;
- Maintaining populations of threatened, endangered, or sensitive species; and
- Vulnerability of the species, population, community, or the habitat to the adverse effects of pollution, noise, habitat alteration, and human trespass;

ii. Conformity and compatibility with existing and projected uses of ocean resources such as fishing, recreational uses, ports and navigation, and waste discharge.

iii. Local and regional economies.

iv. Archeological and historical resources.

v. Transportation safety, accidents.

vi. Geologic hazards.

vii. Cumulative effects of project in conjunction with effects of past projects, other current projects, and probable future projects.

(b) Financial and technical capability of the applicant to perform.

(c) Surveillance and monitoring -- agencies' ability to monitor performance and to respond if needed.

(d) Feasible alternatives to achieve the purpose or objective of the proposed action.

(e) Evaluations for development of nonrenewable resources shall also determine:

i. The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents;

ii. The sensitivity of these biological communities and habitats to such exposure; and

iii. The probable effects of exposure on the marine ecosystem.

2.) Reasonably Foreseeable Adverse Effects. For purposes of the above evaluation, the determination of "reasonably foreseeable adverse effects" shall be based on scientific evidence. The evaluation need not discuss highly speculative consequences. However, the evaluation shall discuss catastrophic environmental effects of low probability.

3.) Use of Available Environmental Information. State and federal agencies may use existing data and information from any source when complying with the requirements for resource inventory and effects evaluation. All data and information used for the inventory and evaluation, including existing data from federal environmental impact statements or assessments, shall meet the same standards of adequacy required for the inventory and the evaluation (see Subsections A.2.c. and A.2.d.)

e. Insufficient/Incomplete Information

1.) Choice. When any agency discovers during the decision-making process that information regarding the effects of the proposed action is insufficient or incomplete, the agency must then determine whether and how to acquire the additional information. In the situation of insufficient information, the agency has the following options:

(a) Terminate, suspend, or postpone the decision-making process until the information is available.

OR

(b) Determine whether the provisions of Subsection A.2.e.2. Limited Environmental Disturbance are appropriate to provide the needed information;

OR

(c) In the case of Developmental Fisheries pursuant to ORS 506.455, apply the provisions of Subsection A.2.e.3.

2.) Limited Environmental Disturbances. To obtain adequate environmental-effects information, it may be necessary to create a limited environmental disturbance and measure the effects. The state agency's decision to allow such a disturbance shall be based on the following:

(a) Approval Criteria:

i. The exclusive purpose of the proposed disturbance shall be to provide needed information for the effects evaluation as required by the provisions of this Part Two of the Territorial Sea Plan.

ii. Adequate inventories of baseline conditions, as required by this Part Two, shall be completed prior to conducting the environmental disturbance.

iii. The risk of adverse effects from the disturbance shall be insignificant, because:

- of low probability of exposure of biological communities and habitats; or
- of low sensitivity of the biological communities and habitats to the exposure; or
- the effects of exposure to sensitive communities and habitats will be insignificant.

iv. The proposed limited environmental disturbance shall not adversely affect any critical marine habitat (see "Definitions" in Glossary).

v. The proposed environmental disturbance shall conserve any marine resource as a whole. In this context, "conserve" means:

- to avoid waste or destruction,
- to restore and/or continuously maintain for future availability, and
- to avoid irreversible or long-term adverse effects.

vi. Each proposed limited environmental disturbance shall avoid significant or long term interference with other human users of marine resources.

vii. The scale (size and time frame) of the limited environmental disturbance shall be the minimum needed to obtain the required information. Characteristics regarding scale and time frame include: geographic scope or coverage; amount of marine resources to be taken, removed, harvested, or altered; the duration of the disturbance.

viii. There shall be an adequate work plan developed as described below.

(b) Conditions on the Limited Environmental Disturbance:

i. All data shall be in the public domain subject to ORS 192.410 et seq.

ii. The proposed limited environmental disturbance shall be scheduled only for short periods of time, as discrete pieces of research, and shall be evaluated before proceeding to additional activities.

(c) Work Plan: A written work plan shall be developed. Elements of the work plan shall include but not be limited to the following:

i. A list of the information needed to satisfy the effects evaluation of this plan.

ii. Specific study objectives to obtain the needed information and explanation of how the study design will meet the objectives.

iii. Description of study methods to meet the objectives, such as:

- Literature review;
- Collection of any needed baseline data;
- Hypotheses to address the study objectives;
- Descriptions of field sampling and data-analyses methods to be used; and
- Use of adequate controls to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.

iv. Supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.

v. Descriptions of how the data and analyses will be reported and delivered for review and approval.

3.) Developmental Fishery Harvest: State law requires the Oregon Department of Fish and Wildlife to institute a management system for the commercial harvest of developmental fishery species, i.e. finfish or invertebrate species that are underutilized or have not been previously harvested. For some fish species very little information is available to assure sustainable harvest or to meet the inventory and effects evaluation required by this plan. Initial harvest of these species may be permitted as controlled "research-level fisheries" to gather necessary information on stocks, habitat interactions, and effects on other marine resources and users. Each such fishery shall be conducted with an information-gathering and research plan developed by the Oregon Fish and Wildlife Commission. The research plan shall address the following:

(a) Approval Criteria:

i. The purpose of research-level fisheries shall be to obtain information needed to manage the fishery on a long-term sustainable basis and to evaluate effects as required by this Territorial Sea Plan and Goal 19;

ii. The scale, intensity, and duration of fishing effortunder a research-level fishery program shall be the minimum needed to obtain information about stock distribution, abundance, reproductive rates, habitat interactions, and life history.

iii. A research-level fishery shall not adversely affect any critical marine habitat, any special management area designated in this Territorial Sea Plan, or any sensitive habitat areas identified in the Oregon Ocean Resources Management Plan.

iv. A research-level fishery shall conserve the species and its environment as a whole. In this context "conserve" means:
- to avoid waste or destruction;
- to restore and/or continuously maintain for future availability; and
- to avoid irreversible or long term adverse effects.

v. A research-level fishery shall
- avoid significant or long term interference with other human users of marine resources;
- minimize disturbance or disruption to other marine resources and biological communities.

(b) Research-Level Fishery Work Plan. A fishery work plan shall be prepared for each research-level fishery and shall include the following:

i. A list of the information needed to satisfy the effectsevaluation of this plan;

ii. Specific study objectives;

iii. Description of study methods to meet the objectives, such as:

- Literature review;
- Hypothese to address study objectives;
- Harvest effort, techniques, and location;
- Related monitoring or sampling necessary to understand the effects of the harvest on associated biological resources and habitats;
- Use of adequate controls to allow the effects of the fishery to be separated from natural fluctuations in the marine environment;

iv. Methods for reporting and analyzing data that have been gathered.

4.) Supervision of Research Quality:

(a) The approving agency may, subject to its statutory authority, require that the research be conducted or paid for by the applicant/development proponent.

(b) The approving agency is responsible for ensuring research quality, techniques which may include the following:

i. Specify the qualifications of researchers, and approve the applicant's proposed research team (that is, the actual people doing the research) and the methods of research.

ii. Determine costs for any cost-incurring participation by state government agencies and assign those costs to the applicant.

iii. Encourage the technical staff of affected state and federal agencies to involve themselves in data collection, analyses, etc. being conducted by or for the applicant--for example, to be on board during research cruises (the applicant would be responsible for any associated costs).

iv. Encourage the submission of results to scientific journals, and the use of peer groups, steering groups, panels of experts, etc. to review research plans, data, analyses, and conclusions.

v. Use administrative techniques to avoid problems with proprietary data, such as summarizing proprietary data.

(c) OPAC recommends to the Legislature that relevant state agencies be provided with adequate staff and funding to conduct long term ocean research and management.

(d) All research data shall be in the public domain as allowed by ORS 192.410 et seq.

f. Analysis of Data

Proponents and opponents of any proposed ocean development, proposed environmental disturbance, or developmental fishery shall each be held to the same standards when analyzing resource inventories and effects evaluations or environmental disturbance data.

g. Inventory/Evaluation Checklist

The Department of Land Conservation and Development shall develop a "checklist" for assisting the relevant agencies in identifying applicable ocean management rules/requirements. The checklist will not be mandatory but merely a guide.

i. Agency Responsibilities, Coordination

Any government agency required to comply with OPAC ocean-management policies and with Goal 19 also has certain responsibilities for making the process work properly. Due to the emphasis on resource inventories and effects evaluations, the review of a single development proposal may often involve other government agencies with relevant resource expertise. In addition, there may be other agencies involved due to, for example, multiple regulatory authorities or required consultation.

1.) Process Coordinator. When multiple agencies are involved for whatever reason, a single agency among the group should serve to coordinate the participation of the agencies and the overall working of the process. "Coordinate" does not mean that an agency is authorized to make decisions for another agency regarding the other agency's compliance with Goal 19 or OPAC's ocean-management policies.

2.) Individual Agency Responsibilities. When multiple agencies are involved, each is responsible for incorporating its relevant components into the inventory and evaluation. Each agency which has the responsibility to comply with OPAC's policies and Goal 19 must ultimately decide what is needed in the inventory and effects evaluation to satisfy the agency's responsibilities, and when it is adequate.

3.) Public Participation. Agencies implementing the Territorial Sea Plan's policies on resource inventories and evaluations shall provide adequate opportunities for citizens to be involved in all phases of the process.