

# **Routine Program Change**

## **Seeking to Incorporate Part Five of the Oregon Territorial Sea Plan Into the Oregon Coastal Management Program**

**January 27, 2014**

### **I. Introduction**

The Oregon Department of Land Conservation and Development (DLCD) seeks approval from the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to incorporate Part Five: Uses of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities (Part Five) of the Oregon Territorial Sea Plan (TSP), into the Oregon Coastal Management Program (OCMP). DLCD requests OCRM's concurrence that the incorporation is a Routine Program Change to the OCMP. This analysis identifies and describes the enforceable policies of this document and explains why they constitute Routine Program Changes as described in 15 C.F.R. §923.84.

Part Five of TSP describes the process for making decisions concerning the development of renewable energy facilities (*e.g.* wind, wave, current, thermal, etc.) in the state's territorial sea, and specifies the areas where development may be sited. The requirements of Part Five are intended to protect areas important to renewable marine resources (*i.e.* living marine organisms), ecosystem integrity, marine habitat and areas important to fisheries from the potential adverse effects of renewable energy facility siting, development, operation, and decommissioning and to identify the appropriate locations for that development which minimize the potential adverse impacts to existing ocean resource users and coastal communities.

The Land Conservation and Development Commission (LCDC) adopted Part Five of the TSP on January 24<sup>th</sup>, 2013. In adopting Part Five into the TSP, the LCDC made findings that Part Five of the TSP carries out the policies of the Oregon Ocean Resources Management Plan as prescribed under ORS 196.405 to 196.515, and is consistent with the applicable Statewide Planning Goals, with emphasis on the coastal goals.<sup>1</sup> Part Five became effective in the state when DLCD filed it as a rule amendment with the Oregon Secretary of State on October 7<sup>th</sup>, 2013 (OAR 660-036-0005), whereupon it became mandatory under ORS 196.485 for state agencies to apply the requirements of the revised Part Five when implementing their individual authorities over activities in the territorial sea.

DLCD is now submitting the current version of Part Five of the TSP to NOAA for incorporation into Oregon's federally-approved coastal program. A previous version of Part Five of the TSP was initially adopted by LCDC on November 5<sup>th</sup>, 2009. That version was not submitted as an RPC request to NOAA pending further changes to the document including the addition of maps, which are incorporated into the current version.

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<sup>1</sup> Findings on the Adoption of an Administrative Rule to Amend the Territorial Sea Plan, adopted January 24<sup>th</sup>, 2013 by the Oregon Land Conservation and Development Commission (see staff report and OAR submittal attached)

Section II of this analysis describes the legal and policy framework of the applicable portions of Oregon’s Coastal Management Program, summarizing the key elements of Oregon’s ocean resources management system and statewide planning goals, especially Goal 19 Ocean Resources. Section III lists and briefly describes the enforceable policies of Part Five of the TSP that DLCD seeks to incorporate into the OCMP. Section IV analyzes the five CZMA program approvability criteria potentially impacted, and determines that this request qualifies as a routine program change. Finally, Section V contains a table of all TSP Part Five provisions Oregon seeks to incorporate into the OCMP as enforceable policies.

## **II. Framework for Oregon’s Approved Coastal Management Program**

### **A. Oregon’s ocean resources management resource and use program:**

As noted in OCRM’s review and approval of the Oregon Ocean Resources Management Act as part of the OCMP in 1988, Goal 19 Ocean Resources (ORS Chapter 197) and the Territorial Sea Plan (ORS Chapter 196.405 to 196.515) are the principal mechanisms by which the state ensures that state agencies and local governments, with state oversight, balance conservation and development of ocean resources and uses via Statewide Goal 19 for Ocean Resources. State agencies are required to make decisions in conformance with state planning goals, the Ocean Resources Management Plan and the Territorial Sea Plan. The state, through the LCDC and DLCD, also reviews changes to the TSP for compliance with the applicable state requirements.

### **B. Statewide Planning Goal 19 and the Territorial Sea Plan**

The statewide planning goals (<http://www.oregon.gov/LCD/goals.shtml>), which LCDC adopted as administrative rules (Oregon Administrative Rules Chapter 660, Division 015) and which OCRM approved as part of the OCMP’s original 1977 approval, express the state’s policies on land and resource use, and (along with additional administrative rules) provide standards for state agency planning and decision-making for marine resources within the territorial sea. Statewide planning goals set standards for how certain types of land are to be planned and zoned. NOAA/OCRM has approved these statewide planning goals and related administrative rules as core components of the OCMP.

Goal 19 sets specific standards for the development and use of ocean resources and the beneficial use of the state’s seafloor. The central purpose and requirements of Goal 19 are: to “conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf”; create a basis for planning and management of state ocean waters through the state Territorial Sea Plan; and establish requirements for state agencies rather than cities and counties. The state adopted the Territorial Sea Plan in 1994, and OCRM approved it as part of the OCMP in 1995. Part Five builds off of the TSP’s existing management framework by describing the process for making decisions about renewable energy facilities in the state’s territorial sea, and specifies the areas where those developments may be sited.

## **III. Part Five of the TSP Enforceable Policies**

DLCD seeks to incorporate Part Five of the TSP into the federally-approved OCMP, and has identified specific sections of Part Five as “enforceable policies” for federal consistency

purposes. As required by 16 USC 1453(6a) and OCRM guidance, the enforceable policies are legally binding and contain standards of sufficient specificity to guide private and public uses.

We have attached the entire TSP Part Five, but please note that TSP Part Five Appendix C contains all of the language from Part Five that meets NOAA’s requirements of an enforceable policy. The language was pulled into Part Five Appendix C to serve as a stand-alone reference of policies applicable for federal consistency. Additionally the policies are listed in the attached table (Section VI) and discussed briefly below.

#### **Section B.4. Resource and Use Inventory and Effects Evaluation and Special Resource and Use Review Standards**

- B.4.b. Sufficiency of Resource and Use Inventory and Effects
- B.4.d. Inventory Content
- B.4.e. Written Evaluation
- B.4.f. Pilot and Phased Development
  - B.4.f.2) Pilot Project
  - B.4.f.3) Phased Development
- B.4.g. Special Resources and Use Review Standards
  - B.4.g.1) General siting and development requirements
  - B.4.g.2) Fisheries Use Protection Standards
  - B.4.g.3) Ecological Resource Protection Standards
  - B.4.g.4) Recreational Resource Standards
  - B.4.g.5) Visual Resource Protection

#### **Section D. Operation Plan Development**

- C.1. Phased Development Plan
- C.2. Facility Development Plan
- C.3. Project Operation Plan
- C.4. Decommissioning Plan
- C.5. Financial Assurance Plan
- C.6. Agreements

#### **Appendix A. Definitions**

All

#### **Appendix B. Map Designations**

All

Part B contains implementation requirements including the criteria that state agencies are required to apply in siting of marine renewable energy facilities and other related structures within the territorial sea. A joint agency review and coordination process is established to provide recommendations to the Department of State Lands on issuing authorizations for projects. The resource inventory and effects evaluation information requirements needed for project applications are listed in Part B, as are special project review criteria that apply to pilot and phased development projects. Part B contains the resource and use review standards for evaluating the impacts to fisheries, ecological resources, recreation, visual resources, and areas

subject to existing proprietary or management authorizations, which are based on the area designations in the plan map which is incorporated into the plan as Appendix B.

Part D contains a list of requirements that must be contained in a project operation plan. These include detailed sub-plans for phased development, facility design and engineering, construction, deployment, maintenance and operation, emergency contingencies, inspections, monitoring, adaptive management, decommissioning, and financial assurances.

#### **IV. This Action is a Routine Program Change**

The incorporation of the enforceable policies of Part Five of the Territorial Sea Plan into the OCMP does not substantially alter any of the five program areas detailed in 15 CFR 923:

##### **1. Uses subject to management (Subpart B)**

This action does not substantially change the uses subject to management specified in the OCMP, which include energy production and fish and wildlife production and utilization. In addition Statewide Planning Goal 19 for Ocean Resources defines beneficial uses to include those such as navigation, food production, recreation, aesthetic enjoyment, and uses of the seafloor. The State of Oregon requires the TSP to be consistent with the statewide planning goals, especially Goal 19 Ocean Resources. As such, marine renewable energy is a beneficial use of the seafloor, as defined under Goal 19. Because the uses permitted by the TSP must be consistent with the statewide planning goals and because Part Five has not added any new uses, incorporation of the updated plan into the OCMP merely refines and does not substantially change the uses subject to management.

##### **2. Special management areas (Subpart C)**

This action does not change the criteria for designating areas of particular concern, or areas for preservation or restoration. Statewide Planning Goal 19 sets the criteria and procedures for establishing and managing ocean resources. The Territorial Sea Plan sets policies and standards for designating and managing these areas within state waters, and Part Five merely provides specific siting and project review requirements as related to one of the allowed beneficial uses.

##### **3. Boundaries (Subpart D)**

This action applies only to the seafloor of the territorial sea under the jurisdiction of the State of Oregon. It does not change Oregon's inland or seaward coastal zone boundary, nor does it change the status of excluded lands.

##### **4. Authorities and organization (Subpart E)**

This action does not change Oregon's authority or organization, nor does it alter Oregon's administration of the OCMP. Oregon's land use system and statewide planning goals establish criteria and standards for ocean planning, and the Territorial Sea Plan Part Five implements those standards for an allowed beneficial use within the territorial sea.

##### **5. Coordination, public involvement and national interest (Subpart F)**

This action does not change any coordination, public involvement, or national interest provisions of the OCMP. The requirements of Part Five further clarify and specify the state agency coordination requirements already stipulated in statute under the Oregon Ocean Resources Management Act and by Goal 19 Ocean Resources.

## V. Enforceable Policies Table

Changes to the OREGON COASTAL MANAGEMENT PROGRAM				
The OREGON COASTAL MANAGEMENT PROGRAM (OCMP) seeks to incorporate the following policies of the <b>Oregon Territorial Sea Plan Part Five</b> into its coastal management program.				
Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	State/Local Legal Citation	Enforcement Mechanism(s)	Date Adopted by State	Date Effective in State
<b>ADDED:</b>				
<b>TSP Part Five</b>  <b>Appendix A: Definitions</b>	TSP Part Five	While DLCD seeks to incorporate Part Five of the Territorial Sea Plan in its entirety into the OCMP, DLCD only seeks to incorporate the provisions listed below as enforceable policies.  Definitions clarify and provide context for many of the sections containing enforceable policies. While this section does not implement any particular requirement or standard, it is necessary to interpret and apply the enforceable policies listed below.	1/24/13	10/7/13
<b>Implementation Requirements, including; 1. Siting, 2. State Agency Review Process, Project Review and Coordination, 4. Resource and Use Inventory and Effects Evaluation and Special Resource and Use Review Standards.</b> B.4.b. Sufficiency of Resource and Use Inventory and Effects B.4.d. Inventory Content B.4.e. Written Evaluation B.4.f. Pilot and Phased Development B.4.f.2) Pilot Project B.4.f.3) Phased Development B.4.g. Special Resources and Use Review Standards B.4.g.1) General siting and development requirements B.4.g.2) Fisheries Use Protection Standards	TSP P.5 B	Department of State Lands ORS 196.800 - ORS 196.990: Ocean Resources Planning and Wetlands  OAR 141-085: Removal Fill Authorization within waters of the state.  OAR 141-083 Cable Easement Authorization  ORS 274 Submersible and Submerged Lands  OAR 141-082 – Authorizations for leases of state submerged or submersible lands  ORS 273 – State Lands Generally	1/24/13	10/7/13

B.4.g.3) Ecological Resource Protection Standards B.4.g.4) Recreational Resource Standards B.4.g.5) Visual Resource Protection		OAR 141-125: Special Use Authorization  OAR 141-140: Ocean Energy Conversion Devices on, in or over State-Owned Land within the Territorial Sea.		
<b>Appendix B: Map Designations</b> <b>The requirements and standards provided under the TSP P.5 B Implementation Requirements, listed below as enforceable policies, are based on the map designations contained in this appendix.</b>	TSP P.5 B	“ ”	1/24/13	10/7/13
<b>Operation Plan Development, including; 1. Phased Development Plan. 2. Facility Development Plan, 3. Project Operation Plan, and 4. Decommissioning Plan.</b> C.1 Phased Development Plan C.2 Facility Development Plan C.3 Project Operation Plan C.4 Decommissioning Plan C.5 Financial Assurance Plan C.6 Agreements	TSP P.5 D	“ ”	1/24/13	10/7/13