



Oregon

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TO: Land Conservation and Development Commission

FROM: Paul Klarin, Marine Affairs Coordinator

SUBJECT: **Agenda Item 7, November 14-15, 2013, LCDC Meeting**

Geographic Location Description Project

I. SUMMARY

The department is working with the federal National Oceanic and Atmospheric Administration (NOAA) and the Bureau of Ocean Energy Management (BOEM) to establish a Geographic Location Description (GLD) outside of state waters. The GLD will apply to specific federal license and permit activities related to marine renewable energy development that will have a reasonably foreseeable effect on Oregon coastal uses and resources, including the leasing and permitting authorized by the Federal Bureau of Ocean Energy Management (BOEM). Once approved by NOAA, the GLD would allow Oregon to automatically initiate the federal consistency review process for federal activities related to marine renewable energy development within the GLD area outside of the state's coastal zone.

II. RECOMMENDED ACTION

There is no action required by the commission for this agenda item.

III. BACKGROUND

A GLD is a geographically specific area where listed federal license or permit activities have been demonstrated to have reasonably foreseeable effects on a states coastal uses or resources. The department will delineate a portion of the area described in Goal 19 as the state's Ocean Stewardship Area for the GLD. The process for creating a GLD is prescribed by the federal consistency provisions of the Coastal Zone Management Act (CZMA). Oregon is seeking the GLD to ensure that any marine renewable energy projects within the federal waters delineated in the GLD are automatically subject to the federal consistency review process. The federal consistency process ensures that federal actions are consistent with the enforceable policies of a state's coastal management program. The sole purpose of a GLD is to review certain selected

federal license or permit activities outside a state's coastal zone. The GLD does not expand the state's boundary or jurisdiction, or dictate any decision by the state.

To be approved by NOAA, the GLD submittal must provide three components. Those parts are: the map delineating the GLD area; the list of federal activities that are subject to the federal consistency review process; and an analysis of the reasonably foreseeable coastal effects from the listed federal activities within the proposed GLD area. The department has an interagency cooperative agreement with the Oregon Department of Fish and Wildlife to provide technical assistance in producing a report on the potential coastal effects of renewable energy on Oregon's important marine ecological resources.

The GLD will be submitted to NOAA by the department as a routine program change under the NOAA rules in 15 C.F.R. § 930.53.

IV. DEPARTMENT RECOMMENDATION

This agenda item is informational only, no action will be required by the commission, and no recommendation is needed from staff.

ATTACHMENTS

- A. OCMP Geographic Location Description Informational Handout
- B. CZMA Federal Consistency Regulations (15 C.F.R. § 930.53)



The Oregon Ocean Stewardship Area GLD Project

Oregon's interests in ocean resource policy and management are not limited to state waters. Because the ocean is part of a much larger regional marine ecosystem, ocean uses and activities that occur in federal waters may affect Oregon's coastal environment and communities. For this reason, in 1991, the State of Oregon defined an Ocean Stewardship Area in the Ocean Resources Management Plan as the area extending through the state's territorial sea out to the toe of the continental shelf.

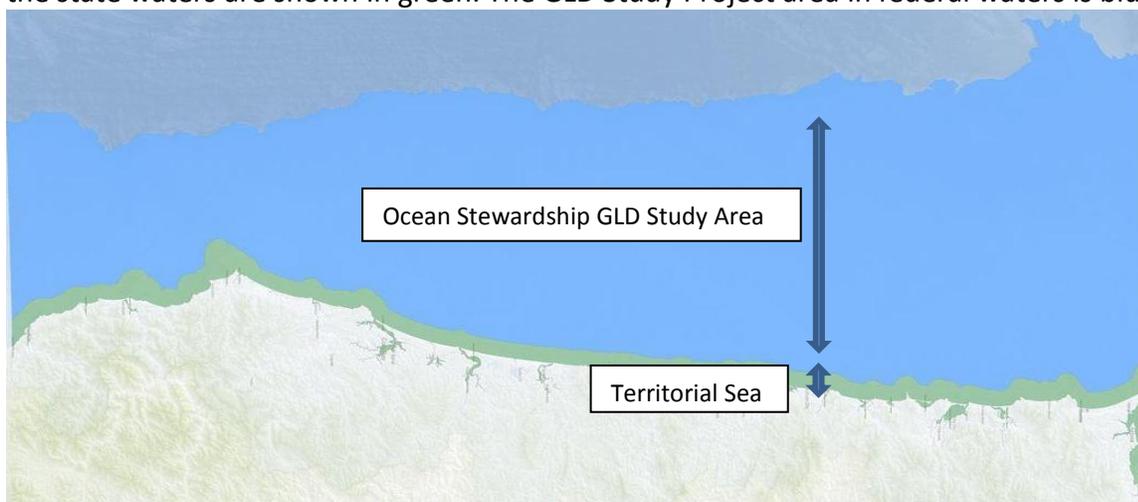
The Oregon Coastal Management Program (OCMP) is working together with the federal National Oceanic and Atmospheric Administration (NOAA) and the Bureau of Ocean Energy Management (BOEM) to establish a Geographic Location Description (GLD) outside of state waters for federal license and permit activities that will have a reasonably foreseeable effect on Oregon coastal uses and resources. Once approved, the GLD would allow Oregon to review certain federal activities outside of the state's coastal zone.

What is a GLD and why is Oregon seeking the GLD?

A GLD is a geographically specific area where listed federal license or permit activities have been demonstrated to have reasonably foreseeable effects on a state's coastal uses or resources. The process for creating a GLD is prescribed by the federal consistency provisions of the Coastal Zone Management Act (CZMA). Oregon is seeking the GLD to ensure that any marine renewable energy projects within the federal waters delineated in the GLD are automatically subject to the federal consistency review process. The federal consistency process ensures that federal actions are consistent with the enforceable policies of a state's coastal management program. The sole purpose of a GLD is to review certain federal license or permit activities outside a state's coastal zone. The GLD does not expand the state's boundary or jurisdiction, or dictate any decision by the state.

Where is the GLD Study Area?

In the figure below, the Oregon Territorial Sea Plan (TSP) part of the Stewardship Area encompasses the state waters are shown in green. The GLD Study Project area in federal waters is blue.



Benefits to Oregon of Designating the GLD

States can develop state ocean management plans for state waters and incorporate such plans and policies into their NOAA-approved coastal management program, as Oregon is doing with the recently adopted Territorial Sea Plan. Enforceable policies from state ocean management plans that are incorporated into a state's NOAA-approved coastal management program may be applied to federal actions, including federal actions in federal waters, through the CZMA federal consistency process. This federal consistency review would be automatically applicable to the specific listed activities within the federally approved GLD.

How does the GLD work?

A GLD must be based on a demonstration of reasonably foreseeable coastal effects from the listed federal license or permit activity in the proposed area. Different listed activities may have different GLDs. In this instance, Oregon is developing a GLD specifically for federal actions that are related to marine renewable energy development; this would include leasing and permitting authorized by BOEM. Even if a GLD is not included in a state's coastal management program for a specific federal license or permit activity, a state may request OCRM approval to review a listed activity outside the state's coastal zone on a case-by-case basis as an unlisted activity. The difference is that with a GLD, the listed activity is automatically subject to federal consistency.

The NOAA standards for establishing a GLD are straight forward. The proposed GLD must be geographically specific, apply to specific listed federal license or permit activities, and based on a scientific analysis showing that effects on the state's coastal uses or resources are reasonably foreseeable. The effects analysis does not have to show proof of coastal effects, but should show a reasonable causal connection. The analysis cannot be based on speculation or conclusory statements.

What are the "enforceable policies" that would be used in the federal consistency review process?

Enforceable Policies are state policies that meet the definition of an enforceable policy under the CZMA and have been approved by NOAA for use in federal consistency reviews. The OCMP consists of a set of *enforceable policies*, including policies from Goal 19 Ocean Resources, the Territorial Sea Plan, and various other state agency authorities. These enforceable policies may be applied to certain federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone through the federal consistency provisions of the CZMA. Basically, the federal agency must provide a determination that their actions, such as authorizing a permit or lease, are consistent with the state's enforceable policies.

How will the study be conducted and who will be involved?

The study will be conducted through a collaborative effort involving state and federal agencies. Geospatial information related to the resources and uses within the study area will be collected and used in the application of an effects test. The OCMP will provide opportunities for the public and others to track the project through the Oregon Ocean Policy Council and other public meetings.

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§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the geographic location of review, States must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.*

To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.