



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

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April 16, 2010

Mr. John King, Chief
Coastal Programs Division
NOAA-OCRM
1305 East-West Hwy
Silver Spring, MD 20910

Re: **Routine Program Change RPC.OR-2010-001**, changes relevant to the management of ocean resources.

Dear Mr. King:

The Oregon Department of Land Conservation and Development (DLCD) requests the Office of Ocean and Coastal Resource Management (OCRM) approve as Routine Program Changes (RPC) to the Oregon Coastal Management Program (OCMP) the following:

- Item 1. Changes to the Oregon Ocean Resources Management Act (ORMA; ORS 196.405-.515)
- Item 2. Changes to Statewide Planning Goal 18, Beaches and Dunes
- Item 3. Adoption of Oregon Revised Statutes 274.867
- Item 4. Adoption of the new Part 5 of the Oregon Territorial Sea Plan (TSP).
- Item 5. Adoption of new Paragraph 5, Section 36, Chapter 660 of the Oregon Administrative Rules (OAR 660-036-0005)
- Item 6. Addition of Oregon Revised Statutes 783.620, Ballast Water Management.

This RPC submission includes the following 14 items:

- Routine Program Change RPC.OR-2010-001, dated April 16, 2010;
- Documents specific to Item 1, the ORMA;
 - Analysis of the changes to the enforceable policies of the coastal program resulting from the 2003 changes to the ORMA (Attachment 1a);
 - Text of the ORMA as modified by the 2003 Oregon Legislature. Where intermixed, deleted text is shown in italic font, added text is shown in bold font (Attachment 1b).



- Documents specific to Item 2, Goal 18;
 - Text of Goal 18 as modified in 1988. Added text is shown as underlined type (Attachment 2).
- Documents specific to Item 3, ORS 274.867;
 - Analysis of the changes to the enforceable policies of the coastal program resulting from the inclusion of ORS 274.867 in the OCMP (Attachment 3a);
 - Text of ORS 274.867 (Attachment 3b).
- Documents specific to Item 4, the new Part 5 of the Territorial Sea Plan;
 - Analysis of the enforceable policies of Part 5 of the TSP (Attachment 4a);
 - Text of Part 5 of the Territorial Sea Plan (Attachment 4b);
 - A copy of the November 5, 2009 memo to the Land Conservation and Development Commission requesting their approval of the addition of Part 5 to the Territorial Sea Plan (Attachment 4c).
- Documents specific to Item 6, Ballast Water;
 - Analysis of the enforceable policies of ORS 783.620, Ballast Water Management (Attachment 6a);
 - Text of ORS 783.620, Ballast Water Management (Attachment 6b).
- A copy of the first public notice of the program change request (Attachment 7).

Thank you for your time and attention in this matter. If you have any questions, please contact Mr. Jay Charland at (503) 373-0050 x253, or by email at jay.charland@state.or.us.

Sincerely,



 Robert J. Bailey, Manager
Oregon Coastal Management Program

cc: Jay Charland, DLCD
Paul Klarin, DLCD
Steve Shipsey, Oregon Department of Justice
Kris Wall, CPD
OCMP File

Routine Program Change

Oregon Department of Land Conservation and Development
Oregon Coastal Management Program
RPC.OR-2010-001
April 16, 2010

Synopsis

The Oregon Department of Land Conservation and Development (DLCD), Oregon Coastal Management Program (OCMP) submits as routine program changes (RPC) the following:

- Item 1. Updates to the Oregon Ocean Resources Management Act (ORMA; ORS Chapter 196.405, *et seq*;
- Item 2. Changes to Statewide Planning Goal 18, Beaches and Dunes;
- Item 3. Adoption of Oregon Revised Statutes Chapter 274.867;
- Item 4. Adoption of the new Part 5 of the Oregon Territorial Sea Plan (TSP);
- Item 5. Adoption of new Paragraph 5, Section 36, Chapter 660 of the Oregon Administrative Rules (OAR 660-036-0005);
- Item 6. Adoption of Oregon Revised Statutes (ORS) Chapter 783.620.

Routine Program Changes

As defined in 15 CFR 923.80, routine program changes are the further detailing of a state coastal management program that does not result in a substantial change to one or more of the program areas in subparts B through F of 15 CFR § 923. The five program areas are:

1. Uses subject to management (Subpart B);
2. Special management areas (Subpart C);
3. Boundaries (Subpart D);
4. Authorities and organization (Subpart E); and
5. Coordination, public involvement, and the national interest (Subpart F).

Item 1. Changes to the Oregon Ocean Resources Management Act (ORS 196.405 – 196.515)

The Oregon Legislature made minor modifications to the Ocean Resources Management Act (ORMA) during the 2003 Legislative Session. This remains the current version. The

principal effects of these changes were to revise the structure of the Ocean Policy Advisory Council (OPAC), and to alter its areas of responsibility.

Analysis of RPC Criteria

Uses Subject to Management

The changes made do not add, modify, or remove uses subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes. Procedures for designating special management areas in the territorial sea, termed 'marine reserves,' are modified and clarified, but no new authorities or policies are created.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon's coastal zone.

Authorities, Organization

These are not substantial changes to the OCMP authorities and organization. There are no changes to the mechanisms or agencies charged with implementing the enforceable policies of the OCMP.

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified. These changes were made by the Oregon Legislature in processes open to many levels of public involvement.

Policies and procedures for considering the national interest in facility siting are not modified.

Analysis of Changes (what actually changed in the law)

The changes reflected in this Item do not alter the enforceable policies of the OCMP. The principal effect of the changes is to alter the composition and duties of the Ocean Policy Advisory Council (OPAC). State agencies continue to be represented on OPAC,

but they are no longer voting members. In addition, the membership of OPAC was changed to give more representation to local governments (cities and counties). The chair of OPAC, formerly appointed by the Governor, is now elected by the voting members.

An analysis of the changes to coastal program enforceable policies resulting from the changes to the ORMA covered by this Item is given in Attachment 1a. The text of the ORMA is given in Attachment 1b.

Dates of Adoption and Effect

The changes to the Oregon Ocean Resources Management Act covered in this RPC became effective on January 1, 2004.

Item 2. Changes to Statewide Planning Goal 18

The Land Conservation and Development Commission (LCDC) amended Item 7 of the Implementation Requirements of Goal 18. Item 7, with new text shown in **bold face font**, now reads:

“7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if 3 the area is committed to development **or is within an acknowledged urban growth boundary** and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties.”

Analysis of RPC Criteria

Uses Subject to Management

The changes made do not add, modify, or remove uses subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon’s coastal zone.

Authorities, Organization

These are not substantial changes to the OCMP authorities and organization. There are no changes to the mechanisms or agencies charged with implementing the enforceable policies of the OCMP.

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified. These changes were made by the Land Conservation and Development Commission in processes open to many levels of public involvement.

Policies and procedures for considering the national interest in facility siting are not modified.

Analysis of Changes (what actually changed in the law)

This amendment to Statewide Planning Goal 18 adds the words "or is within an acknowledged urban growth boundary" to Item 7 of the Implementation Requirements section of the Goal. Prior to this amendment, dune grading and sand movement was allowed only in areas committed to development. An Urban Growth Boundary is established and maintained to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Areas within approved Urban Growth Boundaries are by definition committed to urban development. The added text simply clarifies that dune grading and sand movement is allowed within urban growth boundaries, even if the area in question is not yet developed. The full text of Goal 18 is given in Attachment 2.

Dates of Adoption and Effect

The changes to Goal 18 covered by this RPC were made on February 17, 1988, and became effective on March 31, 1988.

Item 3. Adoption of Oregon Revised Statutes Chapter 274.867

This new section of the ORS grants the authority to the Director of the Department of State Lands to require assurance, through financial means, that wave energy generation projects in Oregon's Territorial Sea would not leave lasting negative impacts following their useful lives.

Analysis of RPC Criteria

Uses Subject to Management

The changes made do not add, modify, or remove uses subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon's coastal zone.

Authorities, Organization

These are not substantial changes to the OCMP authorities and organization. There are no changes to the mechanisms or agencies charged with implementing the enforceable policies of the OCMP.

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified. These changes were made by the Oregon Legislature in processes open to many levels of public involvement.

Policies and procedures for considering the national interest in facility siting are not modified.

Analysis of Changes (*what actually changed in the law*)

For devices which convert the kinetic energy of ocean waves into electricity, the Oregon Legislature granted to the Director of the Department of State Lands (DSL) the authority

to require financial assurances sufficient to cover the costs of (1) closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in Oregon's Territorial Sea, of the facility or device; and (2) any corrective action required to be taken at the site of the facility or device. Prior to the enactment of this section, no such authority existed.

An analysis of the changes to coastal program enforceable policies resulting from the changes to ORS 274.867 covered by this Item is given in Attachment 3a. The text of ORS 274.867 is given in Attachment 3b.

Dates of Adoption and Effect

The addition of ORS 274.867 covered by this RPC was made during the 2007 Legislative Session (ref Oregon Laws 2007, c592, §3).

Item 4. New Part 5 of the Oregon Territorial Sea Plan (TSP)

Analysis of RPC Criteria

Uses Subject to Management

The changes reflected in this RPC do not alter those uses of the coastal zone subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon's coastal zone.

Authorities, Organization

The changes reflected in this RPC do not alter the enforceable policies of the OCMP. Mechanisms for implementation of policies relating to management of the Territorial Sea are modified to reflect the evolution of Oregon's ocean management program as it responds to new situations. Those changes are detailed in the accompanying table (Attachment 4a).

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency. The Department of State Land remains the agency with primary responsibility for implementing the TSP.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified.

Analysis of Changes (what actually changed in the law)

This new Part 5 of the Territorial Sea Plan (TSP), entitled “Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities,” clarifies and expands upon existing state policies. The Policies of Part Five are derived directly from those already established by Goal 19, Ocean Resources, the Territorial Sea Plan, Part One, section (G) Ocean Management Goals and Policies, and ORS 196.420. Those policies are predicated on the protection and conservation of renewable marine resources (i.e. living marine organisms) and ecosystem function and integrity for the long-term ecological, economic and social values and benefits. All three prioritize the protection of renewable resources over non-renewable resources.

For a more detailed explanation of Part 5, please see the November 5, 2009 memo to the Land Conservation and Development Commission from Paul Klarin (Attachment 4c).

An analysis of the changes to coastal program enforceable policies resulting from the adoption of Part 5 of the Territorial Sea Plan is given in Attachment 4a. The text of Part 5 of the TSP is given in Attachment 4b.

Dates of Adoption and Effect

The new Part 5 of the Territorial Sea Plan was adopted on November 5, 2009, and became effective on November 25, 2009.

Item 5. Adoption of new Paragraph 5, Section 36, Chapter 660 of the Oregon Administrative Rules (OAR 660-036-0005)

This routine program change (RPC) updates OAR Chapter 660, Division 36 by adding new Paragraph 5. The purpose of this new section of the OAR is to codify into the OAR the new Part 5 of the Oregon Territorial Sea Plan.

This new section of the Oregon Administrative Rules (OAR) reads:

660-036-0005

Territorial Sea Plan:

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan entitled Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, that the Ocean Policy Advisory Council recommended on October 23, 2009 and the Commission approved as modified on November 5, 2009.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 196.471

Hist.

ORS 196.471 was last modified by the Oregon Legislature in 1993, and was updated with OCRM in 2002. ORS 197.040 defines the duties of the Land Conservation and Development Commission. Those duties include adoption of the Territorial Sea Plan, and maintenance of Chapter 660 of the OAR.

Analysis of RPC Criteria

Uses Subject to Management

The changes made do not add, modify, or remove uses subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon's coastal zone.

Authorities, Organization

This is not a substantial change to the OCMP authorities and organization. There are no changes to the mechanisms or agencies charged with implementing the enforceable policies of the OCMP.

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC clarify but do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified. These changes were made by the Land Conservation and Development Commission (LCDC), its Territorial Sea Plan Advisory Committee (TSPAC), and the Ocean Policy Advisory Council (OPAC) in processes open to many levels of public involvement.

Policies and procedures for considering the national interest in facility siting are not modified.

Analysis of Changes (what actually changed in the law)

The new paragraph 5 of Section 36, Chapter 660 of the OAR codifies the new Part 5 of the Oregon Territorial Sea Plan, making the Territorial Sea Plan legally enforceable policy of the State of Oregon.

Dates of Adoption and Effect

The new section of the OAR, and the new Part 5 of the Territorial Sea Plan were adopted by the LCDC on November 5, 2009, and became effective on November 25, 2009.

Item 6. Adoption of new Oregon Revised Statutes Chapter 783.620, Ballast Water

This routine program change (RPC) adds the enforceable provisions of ORS 783.620 to the Oregon Coastal Management Program. The purpose of this new section of the ORS is to control the introduction of invasive marine species into Oregon waters by regulating the discharge of ballast water from distant areas.

Analysis of RPC Criteria

Uses Subject to Management

The changes made do not add, modify, or remove uses subject to management.

Special Management Areas

No new special management areas are designated through these proposed changes.

Coastal Zone Boundary

The changes reflected in this RPC do not alter the boundaries of Oregon's coastal zone.

Authorities, Organization

This is not a substantial change to the OCMP authorities and organization. There are no changes to the mechanisms or agencies charged with implementing the enforceable policies of the OCMP. The Department of Environmental Quality, which already enforces Oregon laws regarding air and water quality, is responsible for this new statute.

The changes reflected in this RPC do not alter the basic organization of the OCMP. The OCMP will continue to be a networked program, with the Department of Land Conservation and Development as the state's designated lead agency.

Coordination, Public Involvement, the National Interest

The changes reflected in this RPC do not alter the methods of coordination within the OCMP, nor between the OCMP and OCRM.

Public involvement procedures and requirements are not modified.

Policies and procedures for considering the national interest in facility siting are not modified.

Analysis of Changes (what actually changed in the law)

The addition of ORS 783.620 to the coastal program broadens the application of this provision of Oregon law through the application of federal consistency. The law already applies to private vessels operating in Oregon waters. The only practical effect is the extension of the law's application to federal vessels which might be otherwise exempt (e.g., US Navy, US Coast Guard).

An analysis of the changes to coastal program enforceable policies resulting from the adoption of ORS 783.620 is given in Attachment 6a. The text of ORS 783.620 is given in Attachment 6b.

Dates of Adoption and Effect

The dates of adoption for enforceable policies of ORS 783.620 are detailed in Table 6-1 (Attachment 6a).

Oregon Coastal Management Program

OR.RPC-2010-001

Item 1. Incorporation of changes to the Ocean Resources Management Act (ORS 196.405 *et seq*)

Attachment 1a. Analysis of changes to enforceable policies due to the changes to the ORMA.

Table 1-1. Summary of changes to the enforceable policies of the Oregon *Ocean Resources Management Act* (ORS 196.405 to ORS 196.580).

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
REPEALED	Definition of "Ocean Shore."	ORS 196.405(3)		*	2003 Legislative Session, 2003 c.744, §1
REPEALED	Policy to work with partners to protect marine birds and marine mammals.	ORS 196.407(3)		*	2003 Legislative Session, 2003 c.744, §1
MODIFIED	State agencies are no longer required to coordinate with other jurisdictions in the National Wildlife Refuge System.	ORS 196.408(3)		*	2003 Legislative Session, 2003 c.744, §3
MODIFIED	The ODFW is no longer required to coordinate with other states to develop a uniform fish catch and monitoring system.	ORS 196.408(4)		*	2003 Legislative Session, 2003 c.744, §3
NEVER IN THE OCMP	Legislative findings for offshore oil and gas leasing.	ORS 196.410		*	N/A

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
NEVER IN THE OCMP	Legislative findings for ocean resources management.	ORS 196.415		*	N/A
REPEALED	Policy to provide ocean resources management through the state's coastal program and land use program.	Formerly ORS 196.420(3) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §5
MODIFIED	Delete reference to scientific inventory, and add encouragement of research, study, and understanding of ocean processes and marine life.	Formerly ORS 196.420(5) in 2001 Edition. Now ORS 196.420(4) in 2007 Edition.		*	2003 Legislative Session, 2003 c.744, §5
MODIFIED	Change emphasis of OPAC (ref ORS 196.438) <u>from</u> coordination with local comprehensive plans <u>to</u> local government concerns, economic sustainability, and local expertise.	Formerly ORS 196.420(7) in 2001 Edition. Now ORS 196.420(6) in 2007 Edition.		*	2003 Legislative Session, 2003 c.744, §5
Section MODIFIED Paragraph DELETED	Removes state agency coordination requirements (ref ORS 197.180) from description of ORMP.	Formerly ORS 196.425(5). Paragraph deleted in 2007 Edition.		*	2003 Legislative Session, 2003 c.744, §6
MODIFIED	Minor changes to text, generally removal of extraneous or redundant language.	ORS 196.425		*	2003 Legislative Session, 2003 c.744, §6

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
MODIFIED	Remove requirement that state agencies amend their programs and rules to be consistent with the ORMP and TSP.	ORS 196.435(2) in both 2001 and 2007 Editions.	[11]	*	2003 Legislative Session, 2003 c.744, §7
MODIFIED	Delete reference to ORS 201.370 (county boundaries).	ORS 196.435(3) in both 2001 and 2007 Editions.		*	2003 Legislative Session, 2003 c.744, §7
MODIFIED	The Governor is directed to establish an Ocean Policy Advisory Committee (OPAC), but not as an office of the Governor.	ORS 196.438(1)	[3]	*	2003 Legislative Session, 2003 c.744, §8
ADDED	The OPAC shall be staffed by ODFW, DLCDD, and other agencies as directed by the Governor.	ORS 196.438(1)		*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	The Governor or his/her designee is made a non-voting member of OPAC.	ORS 196.438(1)(a)	[4]	*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	The Directors of agencies or their individual designees are made non-voting members of OPAC.	ORS 196.438(1)(b)	[4]	*	2003 Legislative Session, 2003 c.744, §8

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
MODIFIED	Membership of OPAC is expanded to include a representative from the four southern coastal county commissions and from the three northern coastal county commissions.	ORS 196.438(1)(c) & (d) in 2007 Edition. (1)(c) in 2001 Edition.	[5]	*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	The city government representative to OPAC shall be confirmed by the Senate.	ORS 196.438(1)(e) in 2007 Edition. (1)(d) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	“Coastal non-fishing recreation” is defined as surfing, diving, kayaking, or windsurfing.	ORS 196.438(1)(f)(F) in 2007 Edition. (1)(e)(F) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	The representative on OPAC of small ports and local governments is made non-voting.	ORS 196.438(1)(f)(I) in 2007 Edition. (1)(e)(I) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	There are two representatives on OPAC from the general public (formerly three).	ORS 196.438(1)(g) in 2007 Edition. (1)(f) in 2001 Edition.	[6]	*	2003 Legislative Session, 2003 c.744, §8
MODIFIED	The Chair of OPAC shall be elected by the voting members from among the membership.	ORS 196.438(4) in 2007 and 2001 Editions.	[7]	*	2003 Legislative Session, 2003 c.744, §8

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
MODIFIED	OPAC shall periodically review the TSP and submit recommendations for the plan to state agencies.	ORS 196.443(1)(a)		*	2003 Legislative Session, 2003 c.744, §9
ADDED	OPAC shall advance the ocean management policies (ORS 196.420) to the federal government and multi-state bodies.	ORS 196.443(1)(b)		*	2003 Legislative Session, 2003 c.744, §9
ADDED	Recommendations for marine reserves shall be analyzed for short-term and long-term economic impact, and shall be submitted to the Fish and Wildlife Commission for approval.	ORS 196.443(1)(d)	[8]	*	2003 Legislative Session, 2003 c.744, §9
REPEALED	Remove the duty to coordinate review panels.	ORS 196.443(1)(e) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §9
REPEALED	Remove duty to coordinate development of ocean resources information system.	ORS 196.443(1)(g) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §9
REPEALED	Duty to report to the President of the Senate and Speaker of the House on the ORMP.	ORS 196.443(2) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §9
ADDED	OPAC may not regulate fishing.	ORS 196.443(2) in 2007 Edition.		*	2003 Legislative Session, 2003 c.744, §9

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
MODIFIED	OPAC shall meet at least once every six months.	ORS 196.448(2)		*	2003 Legislative Session, 2003 c.744, §10
REPEALED	Ability of OPAC to adopt rules to administer laws for which it is responsible is deleted.	ORS 196.448(3)	[13]	*	2003 Legislative Session, 2003 c.744, §10
REPEALED	Delete paragraph prohibiting review panels from regulating harvesting.	ORS 196.453(4) in 2001 Edition.		*	2003 Legislative Session, 2003 c.744, §11
MODIFIED.	Removed requirement that OPAC invite federal agencies to designate a liaison.	ORS 196.455	[9]	*	2003 Legislative Session, 2003 c.744, §12
REPEALED	Delete paragraph requiring development of TSP policies to reflect local comprehensive plans.	ORS 196.465(2)(d) in 2001 Edition.	[10]	*	2003 Legislative Session, 2003 c.744, §13
REPEALED	Delete paragraph requiring OPAC assist local governments to meet ocean resource management objectives.	ORS 196.465(2)(e) in 2001 Edition.	[10]	*	2003 Legislative Session, 2003 c.744, §13
REPEALED	Delete paragraph requiring OPAC establish provisions for consultation on major ocean activities.	ORS 196.465(2)(f) in 2001 Edition.	[10]	*	2003 Legislative Session, 2003 c.744, §13

Change [1]	Policy	Citation	Notes	Enforcement Mechanism [2]	Adoption Reference
REPEALED	Delete paragraph authorizing OPAC to recommend changes to local comprehensive plans.	ORS 196.465(3) in 2001 Edition.	[10]	*	2003 Legislative Session, 2003 c.744, §13
REPEALED	Delete paragraph requiring OPAC to consult with neighboring states, provinces, and interstate organizations.	ORS 196.475	[12]	*	2003 Legislative Session, 2003 c.744, §14

Notes

[1] *Repealed* means the Legislature has remove the relevant policy from state law. *Deleted* means Oregon is removing the policy from the OCMP, but the policy remains state law. *Modified* means the Legislature has modified the policy as indicated. *Added* means the Legislature has added a new policy to state law.

[2] An asterisk (*) indicates the policy is not enforceable within the meaning of 15 CFR § 930.11(h) and Section 304(6a) of the Coastal Zone Management Act of 1972, as amended.

[3] The Ocean Policy Advisory Council was formerly a part of the Office of the Governor. This change made OPAC a more independent source of advice to the Governor and Legislature on ocean policy issues. The changes also increase the influence of coastal interests and ocean users in the development of ocean policy (see also note 10).

[4] The Governor's representative and the representatives of state agencies were made non-voting members. State government members continue to participate in discussions, and in consensus decision-making. In the event consensus is not reached, final decisions are made by majority vote of the voting members. This change increased the influence of the non-state government and private citizen members on OPAC policy.

[5] Increases the influence of local citizens and governments on OPAC policy. At the same time, ocean policy and terrestrial policy were separated within the land use planning arena. (ref ORS 196.465(2)(d)&(e))

[6] The number of at-large representatives of the public was reduced from three to two. Currently, one member represents the coast while the other represents the state as a whole. This change balances the inclusion of county government representatives (see note 5).

[7] The Chair of OPAC was formerly designated by the Governor. This change further increases the influence of non-state government and private citizen members on OPAC policy.

[8] Explicitly includes economic factors in the analysis of marine reserves.

[9] Formerly a federal liaison was required by statute. Despite this change, OPAC continues to have a federal representative (NMFS) attend its meetings.

[10] This change, along with the changes ORS 196.438(1)(c)&(d) (see note 5), separates ocean management from terrestrial management. The change prevents ocean management from having an undue influence on local land use policies. At the same time, the change reduces or eliminates the influence of local policies on ocean management. This change must be viewed in the context of the changes to OPAC membership and voting (196.438(1)). Those changes tended to increase the influence of coastal and ocean stakeholders in the formulation of Oregon's ocean management policy.

[11] This political compromise re-balanced the roles of various state agencies (most notably the Dept of Land Conservation and Development and the Department of Fish and Wildlife). Regardless of this change, ORS 196.485(3), which was not changed in 2003,

continues to require state agencies to act consistently with the Ocean Resources Management Plan and the Territorial Sea Plan.

[12] This political compromise re-balanced the roles of various state agencies (most notably the Dept of Land Conservation and Development and the Department of Fish and Wildlife) in ocean management.

[13] OPAC is not responsible for the administration of any laws. There is no practical effect to the repeal of this section.

RPC.OR-2010-001

Attachment 1b

Chapter 744 Oregon Laws 2003

AN ACT

Text in *italics* is deleted from the 2001 version.
Text in **bold** is added to the 2003 version.

HB 3534

Relating to ocean resources management; amending ORS 196.405, 196.407, 196.408, 196.415, 196.420, 196.425, 196.435, 196.438, 196.443, 196.448, 196.453, 196.455 and 196.465; and repealing ORS 196.475.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 196.405 is amended to read:

196.405. As used in ORS 196.405 to 196.515, unless the context requires otherwise:

(1) "Council" means the council established in ORS 196.438.

(2) "Exclusive Economic Zone" has the meaning set forth in Proc. 5030 whereby the United States proclaimed jurisdiction over the resources of the ocean within 200 miles of the coastline.

[(3) "*Ocean shore*" has the meaning given the term in ORS 390.770.]

[(4)] (3) "Panel" means a project review panel established under ORS 196.453.

[(5)] (4) "Plan" means the Oregon Ocean Resources Management Plan.

[(6)] (5) "Territorial sea" means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

[(7)] (6) "Territorial Sea Plan" means the plan for Oregon's territorial sea [*and ocean shore adopted as set forth in ORS 196.471*].

SECTION 2. ORS 196.407 is amended to read:

196.407. It is the policy of this state to:

(1) Work with the States of Washington and California to explore the possibility of development of communication information systems including a computerized system of coastal and marine resource information.

(2) Work with the States of Washington and California to develop compatible programs of ocean oil spill response, damage assessment and compensation.

[(3) *Work with the States of Washington and California and federal agencies to develop programs to complement federal programs which protect marine birds and marine mammals.*]

[(4)] (3) Cooperate and coordinate with adjacent states to develop a regional approach to obtaining fisheries information.

SECTION 3. ORS 196.408 is amended to read:

196.408. (1) State agencies shall, to the maximum extent practicable, coordinate development of coastal and ocean information systems with those in adjacent states.

(2) State agencies with responsibility for oil spill and hazardous material response, damage assessment and compensation in the marine environment shall, to the maximum extent practicable, coordinate Oregon's plans, programs, policies and techniques with those of adjacent states.

(3) State agencies which have jurisdiction over water areas, the seabed and resources adjacent to offshore rocks and islands [*shall*] **may** coordinate with adjacent states and federal agencies to develop programs and regulations to manage uses and activities of ocean areas adjacent to coastal cliffs and offshore rocks and islands managed within the National Wildlife Refuge System.

(4) [*State agencies with responsibility for marine fishery resource management shall*] **The State Department of Fish and Wildlife may** coordinate with fishery managers in adjacent states to develop a uniform fish catch and monitoring system.

SECTION 4. ORS 196.415 is amended to read:

196.415. The Legislative Assembly finds that:

(1) The Pacific Ocean and its many resources are of environmental, economic, aesthetic, recreational, social and historic importance to the people of this state.

(2) Exploration, development and production of ocean resources likely to result from both federal agency programs in federal waters of the outer continental shelf and initiatives of private companies within state waters will increase the chance of conflicting demands on ocean resources for food, energy and minerals, as well as waste disposal and assimilation, and may jeopardize ocean resources and values of importance to this state.

[(3) There are many state agencies with particular regulatory or program interests in the ocean, its resources and uses but no comprehensive management plan or process to insure that state interests are protected and promoted both within state waters and beyond.]

[(4)] (3) The fluid, dynamic nature of the ocean and the migration of many of its living resources beyond state boundaries extend the ocean management interests of this state beyond the three geographic mile territorial sea currently managed by the state pursuant to the federal Submerged Lands Act.

[(5)] (4) Existing federal laws, the Coastal Zone Management Act of 1972, the Coastal Zone Act Reauthorization Amendments of 1990, the Magnuson Fisheries Management and Conservation Act of 1976, **as amended**, and the Outer Continental Shelf Lands Act of 1978, recognize the interests of coastal states in management of ocean resources in federal waters and provide for state participation in ocean resources management decisions. The Coastal Zone Act Reauthorization Amendments of 1990 require that all federal coastal activities affecting natural resources, land uses and water uses in the coastal zone must be consistent with the federally approved Oregon Coastal Management Program.

[(6)] (5) The 1983 Proclamation of the 200-mile United States Exclusive Economic Zone has created an opportunity for all coastal states to more fully exercise and assert their responsibilities pertaining to the protection, conservation and development of ocean resources under United States jurisdiction.

[(7)] (6) It is important that the State of Oregon develop and maintain a program of ocean resources management to promote *[and insure coordinated]* management of living and nonliving marine resources within state jurisdiction *[and with adjacent states]*, to insure effective participation in federal agency planning and management of ocean resources and uses which may affect this state, and to coordinate state agency management of ocean resources with local government management of coastal shorelands and resources.

[(8)] (7) While much is known about the ocean, its composition, characteristics and resources, additional study and research is required to gain information and understanding necessary for sound ocean planning and management.

[(9) New and innovative technologies are needed to insure future development of ocean resources in an environmentally responsible manner.]

[(10) Because Oregon's coastal local governments have important regulatory responsibilities for land uses and activities along the ocean shoreline, around estuaries and in coastal watersheds which can affect ocean resources, it is essential that comprehensive land use plans and land use regulations be fully coordinated with the state's program of ocean resource protection and management.]

SECTION 5. ORS 196.420 is amended to read:

196.420. It is the policy of the State of Oregon to:

(1) Conserve the long-term values, benefits and natural resources of the ocean both within the state and beyond by giving clear priority to the proper management and protection of renewable resources over nonrenewable resources;

(2) Encourage ocean resources development which is environmentally sound and economically beneficial to adjacent local governments and to the state;

[(3) Provide for efficient and coordinated ocean resources management through improvement of

the state's coastal management program and statewide land use program;]

[(4)] **(3)** Assert the interests of this state as a partner with federal agencies in the sound management of the ocean resources within the United States Exclusive Economic Zone and on the continental shelf;

[(5)] **(4)** [*Promote*] **Encourage** research, study and understanding of ocean processes, marine life and other ocean resources [*to acquire sufficient scientific inventory information necessary to describe and understand the long-term impacts of the proposed action on resources and uses of the ocean and nearshore area*];

[(6)] **(5)** Encourage research and development of new, innovative marine technologies to study and utilize ocean resources; and

[(7)] **(6)** [*Assure*] **Ensure** that the Ocean Policy Advisory Council will work closely with coastal local governments to incorporate [*wherever possible elements of the local comprehensive plan, insuring coordination of Oregon's Ocean Resources Management Program with local land use plans and land use regulations*] **in its activities coastal local government and resident concerns, coastal economic sustainability and expertise of coastal residents.**

SECTION 6. ORS 196.425 is amended to read:

196.425. To [*assure*] **ensure** the conservation and development of ocean resources affecting Oregon consistent with the purposes of ORS 196.405 to 196.515 [*and 201.370*], a [*coordinated*] program of ocean resource planning and management is established. This program shall be known as the Oregon Ocean Resources Management Program and is part of Oregon's coastal management program. The Oregon Ocean Resources Management Program consists of:

(1) Applicable elements of the Oregon Coastal Management Program approved by the U.S. Secretary of Commerce on July 7, 1977, and as subsequently amended pursuant to the Coastal Zone Management Act of 1972, including statutes[, *programs and policies of state agencies which*] **that** apply to coastal and ocean resources, those elements of [*acknowledged*] local comprehensive plans of jurisdictions within Oregon's coastal zone as defined in the Oregon Coastal Management Program which may be affected by activities or use of resources within the ocean, and those statewide planning goals which relate to the conservation and development of ocean and coastal resources;

(2) The Ocean Policy Advisory Council [*and any cooperative agreements entered into by the council*] or its successor;

(3) **Those portions of** the Oregon Ocean Resources Management Plan [*as prepared and adopted pursuant to*] **that are consistent with** ORS 196.405 to 196.515 [*and 201.370*]; **and**

(4) The Territorial Sea Plan [*described in section 19, chapter 501, Oregon Laws 1991; and*] **as reviewed by the council and submitted to the agencies represented on the council.**

[(5) *State agency coordination requirements of ORS 197.180 as provided in ORS 196.485.*]

SECTION 7. ORS 196.435 is amended to read:

196.435. (1) The Department of Land Conservation and Development is designated the primary agency for coordination of ocean resources planning [*activities and*]. **The department is designated** the State Coastal Management Agency for purposes of carrying out and responding to the Coastal Zone Management Act of 1972. The department shall assist:

(a) The Governor with the Governor's duties and opportunities to respond to federal agency programs and activities affecting coastal and ocean resources; and

(b) The Ocean Policy Advisory Council.

(2) The provisions of ORS 196.405 to 196.515 [*and 201.370*] do not change statutorily and constitutionally mandated responsibilities of other state agencies. [*However, state agencies shall amend their programs and rules relevant to ocean resources to be consistent with the Oregon Ocean Resources Management Plan and the Territorial Sea Plan adopted by the Land Conservation and Development Commission under ORS 196.471.*]

(3) ORS 196.405 to 196.515 [*and 201.370*] do not provide the **Land Conservation and**

Development Commission with authority to adopt specific regulation of ocean resources or ocean uses.

SECTION 8. ORS 196.438 is amended to read:

196.438. (1) [*There is established in the office of the Governor an Ocean Policy Advisory Council which shall be composed of:*] **The Governor shall establish an Ocean Policy Advisory Council that is staffed by the State Department of Fish and Wildlife, the Department of Land Conservation and Development and other departments as the Governor deems necessary. The council shall be composed of:**

(a) The Governor or the Governor's designee, **as a nonvoting member;**

(b) The director or the director's designee of the following agencies, **as nonvoting members:**

(A) Department of Environmental Quality;

(B) State Department of Fish and Wildlife;

(C) State Department of Geology and Mineral Industries;

(D) Department of Land Conservation and Development;

(E) Division of State Lands;

(F) Parks and Recreation Department;

(G) State Department of Agriculture; and

(H) On behalf of the State Board of Higher Education, the director or director's designee of Oregon State University, Sea Grant College;

(c) A [*county commissioner of a county bordering the territorial sea*] **member of the governing body of Coos, Curry, Douglas or Lane County to be appointed by the Governor, chosen in consultation with and with the approval of a majority of the members of the governing bodies of Coos, Curry, Douglas and Lane Counties;**

(d) **A member of the governing body of Clatsop, Lincoln or Tillamook County to be appointed by the Governor, chosen in consultation with and with the approval of a majority of the members of the governing bodies of Clatsop, Lincoln and Tillamook Counties;**

[[*d*]] (e) An elected city official from a coastal city bordering the territorial sea to be appointed by the Governor **with advice from an Oregon coastal zone management association;**

[[*e*]] (f) A representative of each of the following ocean interests, to be appointed by the Governor, **and subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution:**

(A) Commercial ocean fisheries of the North Coast from Newport north;

(B) Commercial ocean fisheries of the South Coast south of Newport;

(C) Charter, sport or recreation ocean fisheries of the North Coast from Newport north;

(D) Charter, sport or recreation ocean fisheries of the South Coast south of Newport;

(E) Ports Marine navigation or transportation;

(F) Coastal nonfishing recreation **interests of surfing, diving, kayaking or windsurfing;**

(G) A coastal conservation or environmental organization;

(H) Oregon Indian tribes appointed after consultation with the Commission on Indian Services;

[*and*]

(I) A coastwide organization representing a majority of small ports and local governments, **as a nonvoting member; and**

(J) **A statewide conservation or environmental organization; and**

[[*f*]] (g) [*Three*] **Two** representatives of the public, at least one of whom shall be a resident of a county bordering the territorial sea, to be appointed by the Governor.

(2) The term of office of each member appointed by the Governor is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A majority of the **voting** members of the council constitutes a quorum for the transaction of

business.

(4) The *[Governor shall appoint the council chair]* **voting members of the council shall elect a person** from among the membership **to chair the council.**

SECTION 9. ORS 196.443 is amended to read:

196.443. (1) The purposes of the Ocean Policy Advisory Council are to:

(a) *[Prepare a management plan for the territorial sea as described in ORS 196.471.]* **Periodically review the Territorial Sea Plan and submit recommendations for the plan to state agencies represented on the council. The council shall recommend deletions to the Territorial Sea Plan of all site designations and management prescriptions to the Land Conservation and Development Commission.**

(b) **Advance the policies of ORS 196.420 to the federal government and any multistate bodies.**

[(b)] (c) Provide a forum for discussing ocean resource policy, planning and management issues and, when appropriate, mediating disagreements.

[(c)] (d) Recommend amendments to the Oregon Ocean Resources Management Plan *[and Territorial Sea Plan]* as needed. **If the recommended amendments to the plan incorporate the establishment of a system of limited marine reserves or other protected areas, the council also shall perform an economic analysis of short-term and long-term effects that the establishment of such areas would have on coastal communities. Any recommended amendments related to marine reserves or marine protected areas shall be submitted to the State Fish and Wildlife Commission for review and approval.**

[(d)] (e) Offer advice to the Governor, the State Land Board, state agencies and local governments on specific ocean resources management issues.

[(e)] *Coordinate interagency and intergovernmental review of specific ocean resource projects or actions through project review panels.]*

(f) Encourage participation of federal agencies in discussion and resolution of ocean resources planning and management issues affecting Oregon.

[(g)] *Coordinate development of a computerized ocean resources information system among affected state and federal agencies.]*

[(2)] *The council shall review the Oregon Ocean Resources Management Program and provide a report to the President of the Senate and the Speaker of the House of Representatives by December 1 of each even-numbered year. The report shall evaluate the program and recommend:]*

[(a)] *Any needed program changes;*

[(b)] *Plans to continue scientific research needed to make decisions; and]*

[(c)] *Any needed legislative changes.]*

(2) The Ocean Policy Advisory Council may not, except to the extent of fulfilling its advisory capacity under subsection (1)(e) of this section, establish fishing seasons, harvest allocations, geographic restrictions or other harvest restrictions.

SECTION 10. ORS 196.448 is amended to read:

196.448. (1) A member of the Ocean Policy Advisory Council is entitled to compensation and expenses as provided in ORS 292.495.

(2) The council shall meet at least once every *[three]* **six** months at a place, day and hour determined by the council. The council also shall meet at other times and places specified by the call of *[one of the cochairs]* **the chair** or of a majority of the members of the council.

[(3)] *In accordance with applicable provisions of ORS 183.310 to 183.550, the council may adopt rules necessary for the administration of the laws that the council is charged with administering.]*

SECTION 11. ORS 196.453 is amended to read:

196.453. (1) The Ocean Policy Advisory Council may establish project review panels to address

and coordinate the interests of state, federal and local governments in specific development proposals.

(2) The council may adopt [*rules*] **guidelines** to establish criteria to create review panels and determine the scope of the activities of the panel.

(3) A panel shall not have any authority independent of the council. The authority of any panel shall be that granted to it by the council.

[(4) A panel shall take no actions establishing any fishing season, harvest allocation, geographic or other harvest restriction for fisheries conducted under a fisheries management plan authorized under 16 U.S.C. 1801 et seq.]

SECTION 12. ORS 196.455 is amended to read:

196.455. To insure that the Oregon Ocean Resources Management Plan and Territorial Sea Plan are coordinated with federal agency programs for coastal and ocean resources, the Ocean Policy Advisory Council [*shall*] **may** invite federal agencies with responsibility for the study and management of ocean resources or regulation of ocean activities to designate a liaison to the council to attend council meetings, respond to council requests for technical and policy information and review draft plan materials prepared by the council.

SECTION 13. ORS 196.465 is amended to read:

196.465. (1) The **Oregon Ocean Resources Management** Plan and Territorial Sea Plan, when adopted pursuant to ORS 196.471, shall be compatible with acknowledged comprehensive plans of adjacent coastal counties and cities.

(2) To insure that the plan [*and the Territorial Sea Plan are*] **is** compatible with the comprehensive plans of adjacent coastal counties and cities, the Ocean Policy Advisory Council shall work with the Department of Land Conservation and Development and any Oregon coastal zone management association to:

(a) Meet and consult with local government officials;

(b) Distribute draft materials and working papers for review and solicit comment on council materials; **and**

(c) Provide technical and policy information to local governments about ocean resource issues[;].

[(d) Develop territorial sea plan policies to reflect, as necessary, coastal local government comprehensive plans;]

[(e) Assist coastal local governments to amend comprehensive plans, as necessary, to meet state ocean resources management objectives; and]

[(f) Establish provisions for mandatory consultation, as necessary, between local governments, the Governor and state agencies on major ocean development activities or actions.]

[(3) Based on consultations between the council and appropriate local governments, the council may recommend to appropriate local governments or the Land Conservation and Development Commission amendments to local comprehensive plans or land use regulations needed to achieve compatibility with the policies of ORS 196.405 to 196.515 and carry out the policies of the Territorial Sea Plan.]

SECTION 14. ORS 196.475 is repealed. Please see Attachment 1c

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with appropriate interstate organizations. [1987 c.576 §13; 1991 c.501 §15]

196.485 State agency coordination requirements; incorporation of plans. (1) If a state agency incorporates the Oregon Ocean Resources Management Plan and Territorial Sea Plan by reference in its coordination program and, upon a finding by the Land Conservation and Development Commission that the agency has amended its rules, procedures and standards to conform with the objectives and requirements of the plan and Territorial Sea Plan, the state agency shall satisfy the requirements of state agency planning and coordination required by ORS 197.180 for ocean planning.

(2) If a state agency does not incorporate the plan or Territorial Sea Plan in its coordination program, the agency shall be subject to the state agency coordination requirements of ORS chapters 195, 196 and 197 for state agency programs, procedures and standards that in any way affect ocean resources.

(3) State agency programs or rules for management of ocean resources or ocean uses shall be consistent with the Oregon Ocean Resources Management Plan and the Territorial Sea Plan. [1987 c.576 §17; 1991 c.501 §17]

196.490 [1987 c.576 §18; repealed by 1991 c.501 §18]

196.495 [1987 c.576 §19; repealed by 1991 c.501 §18]

196.500 [1987 c.576 §20; repealed by 1991 c.501 §18]

196.505 [1987 c.576 §21; repealed by 1991 c.501 §18]

ORS 196.575 was repealed by the 2003 Legislature.

196.575 Authorization to obtain federal oceanographic data; joint liaison program; use of data. (1) The Department of Land Conservation and Development is authorized to participate on behalf of the State of Oregon with the States of Washington, California, Alaska and Hawaii in a joint liaison program with the Center for Ocean Analysis and Prediction of the National Oceanic and Atmospheric Administration.

(2) The objective of the program is to assist the states in taking maximum advantage of the oceanographic data, products and services available from the federal government through the Center for Ocean Analysis and Prediction.

(3) The Department of Land Conservation and Development shall integrate data obtained through the liaison program for use by other state agencies and maximize the use of the State Service Center for Geographic Information Systems. [1991 c.524 §§1,3]

Note: 196.575 and 196.580 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 196 by legislative action. See

Preface to Oregon Revised Statutes for further explanation.

196.580 Liaison program duties. (1) The liaison program shall:

(a) Assist state and local governments to become fully aware of oceanographic data and products available from the federal government and in particular from the Center for Ocean Analysis and Prediction.

(b) Assist the Center for Ocean Analysis and Prediction and the National Oceanic and Atmospheric Administration to become more fully aware of state and local problems and the requirements of state and local governments.

(c) Assist in setting up lines of communication to move oceanographic data and products from the Center for Ocean Analysis and Prediction to the people in the states who need those data and products.

(2) The liaison program also shall include workshops for small groups of technical experts from state and local governments, academic institutions and the private sector. The workshops shall be held at the Center for Ocean Analysis and Prediction in Monterey, California, and at other facilities in the western states as appropriate. [1991 c.524 §2]

Note: See note under 196.575.

From the Preface to the ORS:

“Not added to and made a part of.” Notes may indicate that a particular ORS section was not added to and made a part of the ORS chapter or series in which the section appears. These notes mean that the placement of the section was editorial and not by legislative action. Notes also are used when the series references are either too numerous or too complex to bear further adjustment. However, the note does not mean that the section not added to a series or a chapter is any less the law. The note is intended only to remind the user that definitions, penalties and other references to the series should be examined carefully to determine whether they apply to the noted section. For example, Oregon Revised Statutes contains chapter 137 relating to judgment, execution, parole and probation. A law relating to any of those subjects may be enacted but not legislatively added to ORS chapter 137, even though the section clearly belongs with the related materials found in that chapter. The Legislative Counsel compiles the section where it logically belongs and provides the “not added to” note.

The 1988 change to Goal 18 is found on Page 3 of this document.

Oregon's Statewide Planning Goals & Guidelines

GOAL 18: BEACHES AND DUNES

OAR 660-015-0010(3)

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of this goal.

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

USES

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat as identified through application of Goals 5 and 17.

IMPLEMENTATION REQUIREMENTS

1. Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:
 - (a) The type of use proposed and the adverse effects it might have on the site and adjacent areas;
 - (b) Temporary and permanent stabilization programs and the planned

maintenance of new and existing vegetation;

(c) Methods for protecting the surrounding area from any adverse effects of the development; and

(d) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

2. Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

(a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

(b) Is designed to minimize adverse environmental effects.

3. Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

4. Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater

from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.

5. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

(a) visual impacts are minimized;

(b) necessary access to the beach is maintained;

(c) negative impacts on adjacent property are minimized; and

(d) long-term or recurring costs to the public are avoided.

6. Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if

Added the underlined text in 1988.

the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

- (a) Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;
- (b) Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;
- (c) Identify and set priorities for low and narrow dune areas which need to be built up;
- (d) Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and
- (e) Prohibit removal of sand from the beach-foredune system.

The Commission shall, by January 1, 1987, evaluate plans and actions which implement this requirement and determine whether or not they have interfered with maintaining the integrity of beach and dune areas and minimize flooding and erosion problems. If the Commission determines that these measures have interfered it shall initiate Goal amendment

proceedings to revise or repeal these requirements.

GUIDELINES FOR GOAL 18

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Space, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. INVENTORIES

Local government should begin the beach and dune inventory with a review of Beaches and Dunes of the Oregon Coast, USDA Soil Conservation Service and OCCDC, March 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;
2. Patterns of erosion, accretion, and migration;
3. Storm and ocean flood hazards;

4. Existing and projected use, development and economic activity on the beach and dune landforms; and
5. Areas of significant biological importance.

B. EXAMPLES OF MINIMAL DEVELOPMENT

Examples of development activity which are of minimal value and suitable for development of conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. EVALUATING BEACH AND DUNE PLANS AND ACTIONS

Local government should adopt strict controls for carrying out the Implementation Requirements of this goal. The controls could include:

1. Requirement of a site investigation report financed by the developer;
2. Posting of performance bonds to assure that adverse effects can be corrected; and
3. Requirement of re-establishing vegetation within a specific time.

D. SAND BY-PASS

In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. PUBLIC ACCESS

Where appropriate, local government should require new developments to dedicate easements for public access to public beaches,

dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. DUNE STABILIZATION

Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. OFF-ROAD VEHICLES

Appropriate levels of government should designate specific areas for the recreational use of off-road vehicles (ORVs). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

H. FOREDUNE GRADING PLANS

Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an area-wide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.

Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;
- Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;
- Identifying appropriate sites for public and emergency access to the beach.

Oregon Coastal Management Program

RPC.OR-2010-001

Item 3. Incorporation of ORS 274.867 into the OCMP

Attachment 3a. Analysis of the enforceable policies of ORS 274.867

Table 3-1. Summary and analysis of changes made to enforceable policies of the OCMP by the addition of ORS Section 274.867, which allows the Department of State Lands to require financial assurances on wave energy projects.

Change	Policy	Citation	Notes	Enforcement Mechanism	Adoption Reference
ADDED	Authorizes rules for the permitting of wave energy facilities or devices.	ORS 274.867(1)		[6]	2007 Legislative Session, 2007 c.591, §3
ADDED	Financial assurance required.	ORS 274.867(2)	[1]	[6]	2007 Legislative Session, 2007 c.591, §3
ADDED	Specifies what forms of financial assurance may be accepted.	ORS 274.867(3)		[6]	2007 Legislative Session, 2007 c.591, §3
ADDED	Evidence of financial assurance.	ORS 274.867(4)	[2]	[6]	2007 Legislative Session, 2007 c.591, §3
ADDED	When evidence of financial assurance is required.	ORS 274.867(5)	[3]	[6]	2007 Legislative Session, 2007 c.591, §3

ADDED	Evidence of financial assurance for corrective action.	ORS 274.867(6)	[4]	[6]	2007 Legislative Session, 2007 c.591, §3
ADDED	Provisions for disposing of any excess moneys received for financial assurance.	ORS 274.867(7)	[5]	[6]	2007 Legislative Session, 2007 c.591, §3

Notes

[1] The owners of wave energy facilities or devices shall maintain financial assurances to cover the costs of closing down a facility, maintaining a facility after closure, and performing corrective action (e.g., maintenance and repairs). The financial assurance need not cover the cost of removing seafloor anchors that have subsided below the benthic surface.

[2] Authorizes the Director of DSL to specify through rulemaking what shall constitute acceptable evidence of financial assurance.

[3] Specifies when the owner or operator of a wave energy facility must present evidence of the financial assurance required by ORS 274.867.

[4] Specifies that the owner or operator of a wave energy facility must present evidence of financial assurance for corrective action (e.g., repairs) prior to beginning the corrective action.

[5] Specifies that the owner or operator of a wave energy facility must establish provisions, as approved by the Director of DSL, for disposing of any excess moneys received, including interest earned, for financial assurance.

[6] Enforcement Mechanisms: State permits issued under the Removal/ Fill Law (ORS 196.800 *et seq*) and State Proprietary Leases issued pursuant to ORS 270.110 and ORS 273.426.

Oregon Coastal Management Program

RPC.OR-2010-001

Item 3. Incorporation of ORS 274.867 into the OCMP

Attachment 3b. Text of ORS 274.867

The Oregon Legislature created this section of ORS 274 during the 2007 Session. *All text in this section is new.* Enforceable policies and enforcement mechanisms are detailed in the accompanying Table 3-1.

274.867 Wave energy; financial assurance; rules. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the Department of State Lands may adopt rules for the authorization of wave energy facilities or devices.

(2) Unless exempted under rules adopted by the director under this section, an owner or operator of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in Oregon's territorial sea, of the facility or device; and

(b) Any corrective action required to be taken at the site of the facility or device.

(3) The financial assurance requirements established by subsection (2) of this section may be satisfied by any one or a combination of the following:

(a) Insurance;

(b) Establishment of a trust fund;

(c) A surety bond;

(d) A letter of credit;

(e) Qualification as a self-insurer; or

(f) Any other method set forth in rules adopted by the director.

(4) In adopting rules to implement the provisions of this section, the director may specify policy or other contractual terms, conditions or defenses necessary to establish evidence of financial assurance.

(5)(a) The owner or operator of a facility or device described in subsection (2) of this section must provide the evidence of financial assurance required under this section for closure, post-closure maintenance and corrective action at the time operation of the facility or device is authorized.

(b) By January 31 of each subsequent calendar year, the owner or operator of the facility or device must update the information required under this subsection with the Department of State Lands.

(6) When financial assurance is required for corrective action at the site of a facility or device described in subsection (2) of this section, the owner or operator shall provide evidence of financial assurance before beginning corrective action.

(7) An owner or operator required to provide financial assurance under this section shall establish provisions satisfactory to the director for disposing of any excess moneys received or interest earned on moneys received for financial assurance. [2007 c.591 §3]

Oregon Coastal Management Program

RPC.OR-2010-001

Item 4. Adoption of Part 5 of the Territorial Sea Plan

Attachment 4a. Analysis of changes to enforceable policies due to the adoption of Part 5 of the TSP.

Table 4-1. Summary and analysis of enforceable policies added to the Oregon Coastal Management Program by the addition of Part 5 to the Oregon Territorial Sea Plan.

Change	Policy	Citation	Notes	Enforcement Mechanisms	Adoption Reference
ADDED	The proper siting and development of oceanic renewable energy facilities shall be required in order to minimize damage to or conflict with other existing ocean uses and to reduce or avoid adverse effects on marine ecosystems and coastal communities.	Territorial Sea Plan, Part 5, Section A.1.	[1], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	The siting, development, operation, and decommissioning of renewable energy facilities within the territorial sea shall not threaten or harm renewable marine resources (i.e. living marine organisms), ecosystem integrity, marine habitat and areas important to fisheries. .	Territorial Sea Plan, Part 5, Section A.2.a.	[2], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.

Change	Policy	Citation	Notes	Enforcement Mechanisms	Adoption Reference
ADDED	Protect marine renewable resources, the biological diversity and functional integrity of marine ecosystem, important marine habitat, areas important to fisheries, navigation, recreation and aesthetic enjoyment as required by Statewide Planning Goal 19.	Territorial Sea Plan, Part 5, Section A.2.b.	[8], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	Oceanic renewable energy facilities shall be located within areas designated for that purpose.	Territorial Sea Plan, Part 5, Section B.1.a.	[3], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	DSL shall require that an applicant provides documentation verifying their communication and coordination efforts with local communities, interest groups and advisory committees.	Territorial Sea Plan, Part 5, Section B.3.	[4], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	Applicant shall provide a written resource inventory and effects evaluation.	Territorial Sea Plan, Part 5, Section B.4, B.4.a, B.4.d, and B.4.e	[5]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.

Change	Policy	Citation	Notes	Enforcement Mechanisms	Adoption Reference
ADDED	When the information required by subsection B.4 is insufficient or incomplete, the agency may deny the application, permit a pilot program, or permit development in phases.	Territorial Sea Plan, Part 5, Section B.4.f.	[6]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	Applicant shall provide an Operation Plan as described in Section C.	Territorial Sea Plan, Part 5, Section C.	[7], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.
ADDED	Definitions pertinent to Part 5 of the Territorial Sea Plan set limits on the applicability of the Plan's policies.	Territorial Sea Plan, Appendix A	[9], [10]	[11]	Adopted by the Land Conservation and Development Commission on November 5, 2009.

Notes

[1] Defining the phrase and concept of “proper siting and development of oceanic renewable energy facilities” is the central theme of Part 5 of the Territorial Sea Plan.

[2] The State of Oregon will exercise its regulatory authority and proprietary rights in such a way as to accomplish the goal of preventing threat and harm to living marine resources. Part 5 of the Territorial Sea Plan explains in detail how the State will do this.

[3] The Land Conservation and Development Commission, pursuant to ORS 196.471, will designate areas of the Territorial Sea appropriate for the development of renewable energy facilities. Permits for renewable energy facilities will be issued exclusively to projects located within those areas.

[4] The communication and coordination efforts shall, at a minimum, include information on the proposed project operation protocols, response to emergencies, and procedures for on-going communication as specified in Section C (see Sections C.3 generally, and C.3.c.5).

[5] The resource inventory and effects evaluation shall be sufficient to identify and quantify the short-term and long-term effects of the proposed renewable energy facility development on the affected marine resources and uses. Sections B.4.d and B.4.e specify issues the inventory and effects evaluation should consider. The effects assessment is also described in Statewide Planning Goal 19. The completeness and sufficiency of the analysis is at the discretion of the regulatory agencies.

[6] Phased development projects and pilot projects are designed to allow information gathering and analysis without exposing the marine environment to unnecessary risk or uncontrollable impacts.

[7] The Operation Plan must explain the procedures and mechanisms the operator will employ to ensure the facility complies with regulatory standards and other conditions of the state permits and licenses.

[8] The State of Oregon will exercise its regulatory authority and proprietary rights in such a way as to accomplish the goal of protecting navigation, recreation, and aesthetic enjoyment., as required by Statewide Planning Goal 19. Part 5 of the Territorial Sea Plan explains in detail how the State will do this. Statewide Planning Goal 19 is part of the enforceable policies of the OCMP.

[9] Provisions and requirements of the TSP shall be interpreted and applied using the definitions given in Appendix A.

[10] Where the Territorial Sea Plan (TSP) makes reference to federal agencies, it is expected that federal agencies will exercise their authorities consistent with applicable federal laws, including the Coastal Zone Management Act of 1972, as amended (CZMA). To the extent required by the letter and spirit of the CZMA, federal agencies are expected to discharge their duties in a manner consistent with the enforceable policies of the Oregon Coastal Management Program (OCMP), including the TSP. Except where provided in federal law (e.g., the federal consistency provisions of the CZMA, the water quality certifications required by Section 401 of the Clean Water Act), nothing in the TSP

should be construed as implying that federal agencies are bound to follow the laws of the State of Oregon.

[11] Enforcement Mechanisms: State permits issued under the Removal/ Fill Law (ORS 196.800 *et seq*) and State Proprietary Leases issued pursuant to ORS 270.110 and ORS 273.426. State water quality certification issued pursuant to Section 401 of the Clean Water Act. Coastal Zone Consistency Concurrences issued pursuant to Section 307(c) of the Coastal Zone Management Act.

Oregon Territorial Sea Plan

PART FIVE:

Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities

PART FIVE of the Territorial Sea Plan describes the process for making decisions concerning the development of renewable energy facilities (*e.g.* wind, wave, current, thermal, etc.) in the state territorial sea, and specifies the areas where that 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.

Oregon's renewable energy portfolio lists ocean energy as a renewable energy source with potential to reduce dependence on fossil fuels.¹ Renewable ocean energy facilities development may present opportunities to apply technologies that rely on wave, wind, current or thermal energy, that may potentially reduce the environmental impact of fossil fuels. If developed in a responsible and appropriate manner, in accordance with the requirements of this Part and other applicable state and federal authorities, renewable ocean energy may help preserve Oregon's natural resources and enhance our quality of life.

A. Renewable Energy Facilities Development

1. Background

Oregon's territorial sea has been identified as a favorable location for siting renewable energy facilities for research, demonstration and commercial power development. These facilities may vary in the type and extent of the technologies employed and will require other related structures, equipment or facilities to connect together, anchor to the seafloor and transfer energy to on-shore substations. The State of Oregon will require the proper siting and development of these facilities in order to minimize damage to or conflict with other existing ocean uses and to reduce or avoid adverse effects on marine ecosystems and coastal communities.

State agencies, including the Oregon Departments of State Lands, Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Water Resources, Energy, and Geology and Mineral Industries, need specific policies and standards for considering the siting and regulation of renewable energy facility development in the territorial sea. The State also needs specific policies and standards to guide federal agencies in the siting

and regulation of renewable energy facilities development located in federal waters adjacent to the Oregon territorial sea.²

NOTE: Notwithstanding Part One, paragraph F.1.b, the following policies and implementation requirements are mandatory. Decisions of state and federal agencies with respect to approvals of permits, licenses, leases or other authorizations to construct, operate, maintain, or decommission any renewable energy facility to produce, transport or support the generation of renewable energy within Oregon's territorial waters and ocean shore must comply with the requirements mandated in the Oregon Territorial Sea Plan. The enforceable policies of the Territorial Sea Plan and the Oregon Coastal Management Program are applicable to those federal actions that affect Oregon's coastal zone and are subject to the federal consistency requirements of the federal Coastal Zone Management Act.

2. Policies

The following policies apply generally to renewable energy facilities within the Oregon Territorial Sea, and establish the guiding principles for the implementation requirements listed in section B. When making decisions to authorize the siting, development, operation, and decommissioning of renewable energy facilities within the territorial sea, state and federal agencies shall³:

- a. Maintain and *protect* renewable marine resources (*i.e.* living marine organisms), ecosystem integrity, *marine habitat* and *areas important to fisheries* from adverse effects that may be caused by the installation or operation or removal of renewable energy facility by requiring that such actions:
 - 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the marine ecosystem and coastal communities, and give first priority to the conservation and use of renewable marine resources;
 - 2.) Minimize effects by limiting the degree or magnitude of the action and its implementation;
 - 3.) Rectify or mitigate the effects that occur during the lifetime of the facility by monitoring and taking appropriate corrective measures through adaptive management; and
 - 4.) Restore the natural characteristics of a site to the extent practicable when the facility and structures are decommissioned and removed.
- b. Protect marine renewable resources, the biological diversity and functional integrity of marine ecosystem, important marine habitat, areas important to fisheries, navigation, recreation and aesthetic enjoyment as required by Statewide Planning Goal 19.
- c. Promote direct communication and collaboration between an applicant for a state or federal authorization for the siting, development and operation of renewable energy facilities and affected ocean users and coastal communities to reduce or avoid conflicts.

Agencies will strongly encourage applicants to engage with local, state and federal agencies, community stakeholders, tribal governments and affected ocean users in a collaborative agreement-seeking process prior to formally requesting authorization to initiate a project.⁴

- d. Limit the potential for unanticipated adverse impacts by requiring, as necessary, the use of pilot projects and phased development to collect data and study the effects of the development on the affected marine resources and uses.
- e. Encourage the research and responsible development of ocean-based renewable energy sources including wave, tidal, and wind that meet the state's need for economic and affordable sources of renewable ocean energy.

B. Implementation Requirements

State and federal agencies shall apply the following implementation requirements when considering a proposal for the placement or operation of a renewable energy facility development within the Oregon Territorial Sea. Regulating agencies shall comply with the standards and procedural requirements in Part Five of the Territorial Sea Plan as prescribed below. This includes the cables, connectors or other transmission devices that connect, anchor, support or transmit energy between the separate components within a renewable energy facility. The requirements in Part Four, Uses of the Seafloor for Telecommunication Cables, Pipelines, and other Utilities, will apply to the utility cables that transmit the electrical energy from the renewable energy facility to the on-shore substation. The requirements in Part Two, Making Resource Use Decisions, Sections A and B, will not apply to the evaluation, siting or operation of renewable energy development or other related structures, equipment or facilities.

1. Siting: areas designated for renewable energy facilities development.

a. In State Waters:

Pursuant to the requirements for amending the Territorial Sea Plan under ORS 196.471, to carry out the policies of the Oregon Ocean Resources Management Act and consistent with the statewide planning goals, the Land Conservation and Development Commission will designate areas of the territorial sea appropriate for the development of renewable energy facilities.⁵ (See appendix C map). Renewable energy facilities development of the state lands of the territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of the Ocean Shore State Recreation Area) shall be sited within the areas designated for that use so as to avoid, minimize or mitigate the adverse effects of that development, and to protect: renewable marine resources, biological diversity and functional integrity of marine ecosystem, important marine habitat, and areas important to fisheries, as defined in Statewide Planning Goal 19 Ocean Resources.

b. In Federal Waters:

The Department of Land Conservation and Development will review federal decisions to permit, license, or otherwise authorize renewable energy facilities development

within the waters and seafloor of the outer continental shelf adjacent to the Oregon Territorial Sea for consistency with the Oregon Territorial Sea Plan and the applicable enforceable policies of the Oregon Coastal Management Program. Federal actions, including the issuance of any federal authorizations, that affect any land or water use or natural resources of the Oregon Coastal Zone shall be supported by environmental studies and analysis as prescribed below, to ensure compliance with the enforceable policies of Oregon Territorial Sea Plan and the Oregon Coastal Management Program.⁶

2. State Agency Review Process

Pursuant to ORS 196.485 and ORS 197.180, state agencies shall apply the policies and provisions of the Oregon Ocean Resources Management Plan and Territorial Sea Plan, and Goal 19 Ocean Resources as required to comply with State Agency Coordination Programs (OAR chapter 660, divisions 30 and 31).

The Department of State Lands shall coordinate the review of requests for approvals of leases, temporary use permit, easements and removal-fill in consultation with the Departments of Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Water Resources, Geology and Mineral Industries, Energy, coastal local governments, and tribal governments as appropriate. These agencies, with the addition of the regulating federal agencies, will constitute the joint agency review team (JART) described in subsection B.3 below. Pursuant to the federal Coastal Zone Management Act, the Department of Land Conservation and Development will review the consistency certification together with required necessary data and information submitted by the applicant for federal authorization for a renewable energy facilities development to ensure the project is consistent with enforceable policies of the Oregon Coastal Zone Management Program, including the Territorial Sea Plan.

3. Project Review Process and Coordination

The Department of State Lands (DSL) shall convene the JART, in order to facilitate the coordination of state and federal agencies as they apply their separate regulatory, proprietary, or other authorities to the review of a proposed renewable energy facility development. The team shall consist of the state and federal agencies with regulatory or planning authority applicable to the proposed project and location; DSL shall also request that affected local jurisdictions, if any, participate in the JART review and may also invite local or statewide interest groups and advisory committees to participate. The joint agency review team will coordinate the review process, and comment on the adequacy of the resource inventories and effects evaluations required under subsection B.4 (Resource Inventory and Effects Evaluation Standards), below, and NEPA environmental assessments and environmental impact statements. The joint agency review team will also consider the adequacy of the information provided for the operation plan, as required under section C. (Operation Plan Development) below, including the monitoring requirements, mitigation measures, adaptive management plans, construction and operational performance standards, or any other special conditions that a regulating state agency may apply pursuant to the lease, permit, license or other authorization.

DSL shall require that an applicant provides documentation verifying their communication and coordination efforts with local communities, interest groups and advisory committees. Those efforts shall, at a minimum, include information on the proposed project operation protocols, response to emergencies and procedures for on-going communication as specified in section C (Operation Plan Development), below.

4. Resource Inventory and Effects Evaluation Standards

Regulating agencies will require the applicant to provide a resource inventory and effects evaluation, as required by this subsection, prior to making any decision. State agencies will assist the applicant by providing readily available data and other information as applicable to the review process.

a. Sufficiency of Inventory and Evaluation

The resource inventory and effects evaluation shall be sufficient to identify and quantify the short-term and long-term effects of the proposed renewable energy facility development on the affected marine resources and uses.

b. Purpose of the Effects Evaluation

The purpose of the effects evaluation is to determine whether the proposed actions can meet the policies and standards for the protection of resources, resource users and coastal communities referred to above in subsection A.2 (Policies), above. The evaluation will help identify where the applicant needs to address deficiencies. The regulating agency will use the evaluation to develop specific measures for environmental protection and mitigation, measures to protect ocean uses, monitoring, and adaptive management.

c. Use of Available Environmental Information

Regulating agencies may allow the applicant to 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.

d. Inventory Content

To evaluate the magnitude of the proposed project, the likelihood of the effects of the project, and the significance of the resources and uses that the project may affect, regulating agencies shall require that the applicant include consideration of the following factors in the inventory:

- 1) Proposed factors associated with the development, placement, operation, maintenance, and decommissioning of the project:
 - 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 systems needed for service and support;
 - E) Materials to be disposed of and method of disposal;

- F) Physical and chemical properties of hazardous materials, if any, to be used or produced;
 - G) Navigation aids; and
 - H) Proposed time schedule.
- 2) Location and description of all affected areas, including, but not limited to:
- A) Site of the renewable energy facility;
 - B) Adjacent areas that may be affected by physical changes in currents and waves caused by the facility;
 - C) Utility corridor transiting territorial sea and ocean shore; and
 - D) Shoreland facilities.
- 3) Physical and chemical conditions including, but not limited to:
- A) Water depth;
 - B) Wave regime;
 - C) Current velocities;
 - D) Dispersal, horizontal transport, and vertical mixing characteristics;
 - E) Meteorological conditions; and
 - F) Water quality.
- 4) Bathymetry (bottom topography) and Shoreline Topography (LIDAR (Light Detection And Ranging))
- 5) Geologic structure, including, but not limited to:
- A) Geologic hazards, such as faults or landslides of both marine and shoreline facility areas;
 - B) Mineral deposits;
 - C) Seafloor substrate type; and
 - D) Hydrocarbon resources.
- 6) Biological features, including, but not limited to:
- A) Critical marine habitats (see Appendix A);
 - B) Other marine habitats;
 - 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;
 - F) Other elements important to the marine ecosystem; and
 - G) Marine species migration routes.
- 7) Cultural, economic, and social uses affected by the project including, but not limited to:
- A) Commercial and sport fishing;
 - B) State or Federally protected areas;
 - C) Scientific research;
 - D) Ports, navigation, and Dredge Material Disposal sites;
 - E) Recreation;
 - F) Coastal Communities Economy;

- G) Aquaculture;
- H) Waste water or other discharge;
- I) Utility or pipeline corridors and transmission lines;
- J) Military Uses; and
- K) Aesthetic Resources.

- 8) Significant historical, cultural or archeological resources.
- 9) Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project.

e. Written Evaluation.

Regulating agencies shall require the applicant to submit a written evaluation of all the reasonably foreseeable adverse effects associated with the development, placement, operation, and decommissioning of the proposed renewable energy facility. For purposes of the evaluation, the submittal shall base the determination of “reasonably foreseeable adverse effects” on scientific evidence. The evaluation shall describe the potential short-term and long-term effects of the proposed renewable energy facility on marine resources and uses of the territorial sea, continental shelf, onshore areas and coastal communities based on the inventory data listed in paragraph B.4.d above and the following considerations:

1) Biological and Ecological Effects:

Biological and ecological effects include those on critical marine habitats and other habitats, and on the species those habitats support. The evaluation will determine the probability of exposure and the magnitude of exposure and response, as well as the level of confidence (or uncertainty) in those determinations. The evaluation need not discuss highly speculative consequences. However, the evaluation will discuss catastrophic environmental effects of low probability. Factors to consider include, but are not limited to:

- A) The time frames/periods over which the effects will occur;
- B) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;
- C) Maintaining populations of threatened, endangered, or sensitive species;
- D) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
- E) The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents.

2) Current Uses:

Evaluate the effects of the project on current uses and the continuation of a current use of ocean resources such as fishing, recreation, navigation, and port activities. Factors to consider include, but are not limited to:

- A) Local and regional economies;
- B) Archeological and historical resources; and
- C) Transportation safety and navigation.

3) Natural and Other Hazards

Evaluate the potential risk to the renewable energy facility, in terms of its vulnerability to certain hazards and the probability that those hazards may cause loss, dislodging, or drifting of structures, buoys, or facilities. Consider both the severity of the hazard and the level of exposure it poses to the renewable marine resources and coastal communities. Hazards to be considered should include the scouring action of currents on the foundations and anchoring structures, slope failures and subsurface landslides, faulting, tsunamis, variable or irregular bottom topography, weather related, or due to human cause.

4) Cumulative Effects

Evaluate the cumulative effects of a project, including the shoreland component, in conjunction with effects of any prior phases of the project, past projects, other current projects, and probable future projects.⁷ The evaluation should analyze the biological, ecological, physical, and socioeconomic effects of the renewable energy facility development and of other renewable energy facility projects along the Oregon coast, while also taking into account the effects of existing and future human activities and the regional effects of global climate change.

A) In conducting the cumulative effects analysis, the applicant should focus on the specific resources and ecological components, as detailed under paragraph B.4.d above, that may be affected by the incremental effects of the proposed project and other projects in the same geographic area. The evaluation should consider whether:

- 1) the resource is especially vulnerable to incremental effects;
- 2) the proposed project is one of several similar projects in the same geographic area;
- 3) other developments in the area have similar effects on the resource;
- 4) these effects have been historically significant for this resource; and
- 5) other analyses in the area have identified a cumulative effects concern.

B) The Joint Agency Review Team may determine the scope of the cumulative effects analysis through a set of guidelines developed by JART that regulating agencies will require for phased development projects as described below under subparagraph B.4.f.3 and subsection C.1. The JART will make a determination from the analysis to inform location, scale, scope and technology of the phased development project; to provide input on any other factors it determines to be relevant; or both. The renewable energy project developer will conduct a comprehensive cumulative effects analysis at the initial phase of a development designed to inform future phases of development. The regulating agencies and project developer will use adaptive management or a similar process to evaluate the project at each subsequent phase; the intent of such evaluation is to inform the design, installation and operation of successive phases.

f. Insufficient/Incomplete Information

An applicant may not be able to obtain or provide the information required by subsection B.4 (Resource Inventory and Effects Evaluation Standards), above, due to the lack of data available about the effect that the proposed development may have on environmental resources and uses. When a regulating agency determines that the information provided by the applicant is not sufficient or complete enough to fulfill the requirements of subsection B.4,⁸ the agency has the following options:

1) Agency Discretion

The regulating agency may terminate the decision-making process or suspend the process until the applicant provides the information.

2) Pilot Project

The regulating agency may recommend that an applicant conduct a pilot project to obtain adequate information and data and measure the effects. Pilot projects are renewable energy facility developments which are removable or able to be shut down quickly, are not located in sensitive areas, and are for the purpose of testing new technologies or locating appropriate sites.⁹ The agency's decision to allow the use of a pilot project is for the purpose of obtaining the data and information necessary to fulfill the requirements of subsection B.4., and shall be based on the following approval criteria:

A) The exclusive purpose of the pilot project shall be to provide information on the performance, structural integrity, design and environmental effects of a specific renewable energy technology or its supporting equipment and structures.

B) The applicant shall complete adequate inventories of baseline conditions, as required by paragraph B.4.d (Inventory Content) above, prior to conducting the pilot project.

C) The risk of adverse effects from the pilot project shall be insignificant, because:

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

D) The pilot project shall not adversely affect any "important marine habitat" or "critical marine habitat" (see Appendix A: Glossary of Terms).

E) The pilot project will have a term, not to exceed five years, and authorization for the project will include a standard condition requiring project alteration or shutdown in the event that an unacceptable level of environmental effect occurs.

F) The pilot project shall avoid significant or long-term interference with other human uses of marine resources, and will require decommissioning and site

restoration at expiration of the authorization period if federal and state authorization for a commercial renewable energy facility is not sought.

G) All data shall be in the public domain subject to ORS 192.410 *et seq.*

H) Work Plan: The applicant shall provide a written work plan which will include, but not be limited to the following:¹⁰

1. A list of the information needed to satisfy the requirements of subsection B.4. above.
2. Specific pilot project objectives to obtain the needed information and an explanation of how the study or test design will meet the objectives.
3. Description of study or test methods to meet the objectives, such as:
 - (a) Literature review;
 - (b) Collection of any needed baseline data;
 - (c) Hypotheses to address the study objectives;
 - (d) Descriptions of field sampling and data-analyses methods to be used; and
 - (e) Use of adequate controls to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
4. Supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.
5. Descriptions of how the data and analyses will be reported and delivered to the regulating agency for review and approval.

3) Phased Development

The regulating agency may recommend that an applicant conduct a project as a phased development in order to obtain adequate information and data and to measure the incremental effects of each phase prior to further or complete build-out of the project. Phased development projects are renewable energy facility developments which are limited in scale and area, but are designed to produce energy for commercial use. The applicant for a phased development project will need to comply with the requirements of subsection B.4. A regulating agency's decision to allow the use of a phased development project is designed to allow for commercial energy production while obtaining certain data and information that are necessary to fulfill the requirements of subsection B.4., but can only be obtained through the monitoring and study of the effects of the development as it is installed and operated for a discrete period of time.

g. Test Facility

Applications for a permit, license, or other authorization for the installation and use of an experimental or test device at the Northwest National Marine Renewable Energy Center Mobile Test Berth Site zone, are not subject to the requirements of section B. See section D: Northwest National Marine Renewable Energy Center Mobile Test Berth Site, below, for the specific requirements for the use of these facilities.

C. Operation Plan Development

The regulating agency shall require the applicant to submit an operation plan as a condition of approval for a state or federal permit, license, lease or other authorization for renewable energy facility development. The operation plan must explain the procedures and mechanisms that the operator will employ so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, adverse environmental effects, maintenance and safety, operational failure and incident reporting. The operation plan shall be designed to prevent or mitigate harm or damage to the marine and coastal environment and at a minimum shall include the following information:

1. Phased Development Plan

A regulating agency may require that a facility be developed in phases in order to determine whether the environmental effects of the structures and the operation of the facility are consistent with the inventory and effects evaluation conducted under subsection B.4. The requirements for an operation plan listed in this section would apply to each stage of the phased development so as to account for any changes in design, technology or operation that may result from monitoring the initial phase of the operation. The state and federal joint agency review team will assist the developer in assessing the environmental effects of the initial phase and in determining what, if any, changes in the development and operation of future phases of the facility might be necessary to mitigate or prevent harm or damage to the marine ecosystem.

A facility that has been developed to the full extent of its design and operating capacity may, during the lifetime of its authorization, require systematic improvements to the technology, structures and operational procedures that were originally authorized. The regulating agency will require a new facility development plan, as appropriate and necessary, to provide the data and information for the redevelopment and operation of the new facility components.

2. Facility Development Plan

A plan is required that describes the physical and operational components of the proposed facility and must contain, at minimum, detailed technical information, data, protocols and references for:

- a. Structural and project design, materials used, anchoring and installation information;
- b. All cables and pipelines, including lines on project easements;
- c. A description of the deployment activities;
- d. A listing of chemical products used;
- e. A description of vessels, vehicles, aircraft and the transit lanes that will be used;
- f. A general description of the operating procedures and systems;
- g. Construction schedule; and
- h. Other information as required by the Department of State Lands.

3. Project Operation Plan

An operation plan is required that describes, at a minimum, information regarding the routine environmental monitoring, safety management and emergency response procedures, facility inspections, and the decommissioning of the project. The operation plan should

explain the procedures and mechanisms that will be employed so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, environmental protection and mitigation, facility maintenance and safety, operational failure and incident reporting. An operation plan will include the following information:

a. Contingency Plan:

A plan to describe how the facility operator will respond to emergencies caused by a structural or equipment failure due to human error, weather, geologic or other natural event. The plan should include a description of the types of equipment, vessels and personnel that would be deployed, the chain of command or management structure for managing the facility repairs, recovery or other forms of remedial action, and the process and timeline for notification of state and federal authorities.

b. Inspection Plan:

A plan to provide for the implementation of a routine inspection program to ensure the mechanical, structural and operational integrity of renewable energy project facilities and other related structures, equipment or facilities. In addition, unscheduled inspections are to be required after any major geologic or meteorologic event to ensure continued operational safety and environmental protection.

c. Monitoring Plan:

A plan to provide for the implementation of a routine standardized monitoring program for potential impacts on specific resources as specified by the resource inventory and effects evaluation. The operator shall monitor activities related to the operation of the facility and demonstrate that its performance satisfies specified standards in its approved plans. Monitoring shall be sufficient to accurately document and quantify the short-term and long-term effects of the actions on the affected resources and uses. Plans for monitoring must include, at a minimum:

- 1) A list of the information needed to satisfy an effects evaluation.
- 2) Specific study objectives to obtain the needed information and explanation of how the study design will meet the objectives.
- 3) Description of study methods to meet the objectives, such as:
 - A) Literature review;
 - B) Collection of needed baseline data;
 - C) Hypotheses to address the study objectives;
 - D) Descriptions of field sampling and data-analyses methods to be used; and
 - E) Use of adequate controls, such as control sites, to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
- 4) The monitoring plan will include supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.¹¹

- 5) The monitoring plan will include a description of the method that will be used to report and deliver data and analyses information to the authorizing state agency for review in a timely and efficient manner.¹²

d. Adaptive Management Plan

An adaptive management plan to provide a mechanism for incorporating new findings and new technologies into the operation and management of the project. The adaptive management plan shall include performance standards that are based on results of the resource inventory and effects evaluation and incorporated in the study design of the monitoring plan as described in paragraph C.3.c (Monitoring Plan), above. The plan will explain the processes for how adaptation measures are applied to the operation of the project. When the monitoring results show that the performance standards are not being met due to the operation of the facility, adaptation measures designed to bring the operation into compliance with the performance standard will be applied to the operation of the project. The adaptive management plan will explain processes for how adaptation measures will be applied to the operation and management of the project. The adaptive management plan should account for:

- 1) Variable conditions in the marine environment;
- 2) Change in the status of resources;
- 3) New information provided by monitoring of the project;
- 4) Data and information provided by research and from other sources;
- 5) New technologies that would provide for greater protection of ocean resources;
- 6) Ocean fisheries, or other ocean uses to be protected from adverse effects and operational conflicts; and
- 7) Unanticipated cumulative effects.

4. Decommissioning Plan:

An applicant is required to provide a plan to restore the natural characteristics of the site to the extent practicable by describing the facilities to be removed.¹³ The plan should include; a proposed decommissioning schedule; a description of removal and containment methods; description of site clearance activities; plans for transporting and recycling, reusing, or disposing of the removed facilities; a description of those resources, conditions, and activities that could be affected by or could affect the proposed decommissioning activities; results of any recent biological surveys conducted in the vicinity of the structure and recent observations of marine mammals at the structure site; mitigation measures to protect archaeological and sensitive biological features during removal activities; and a statement as to the methods that will be used to survey the area after removal to determine any effects on marine life. A decommissioning plan should identify how the project owner will restore the site to the natural condition that existed prior to the development of the site, to the extent practicable.

5. Financial Assurance Plan:

The applicant must provide a financial assurance compliance plan that describes their ability to comply with the state regulating agency requirements for financial assurance instruments to guarantee performance, and any other financial terms and conditions that may be applied. Wave energy facilities or devices shall comply with the requirements of

ORS 274.867,¹⁴ and the implementing administrative rules of the Department of State Lands, OAR 141-140-0080 and OAR 141-140-0090.

6. Agreements:

Applicants are required to communicate with traditional ocean users and stakeholders with an interest in the area of the proposed project to address issues of concern.¹⁵ Applicants are encouraged to memorialize agreements with those ocean users and stakeholders on the specific actions that the applicant will take to address their issues of concern.

D. Northwest National Marine Renewable Energy Center Mobile Test Berth Site

1. Test Berth Site Plan

The Northwest National Marine Renewable Energy Center mobile test berth site is established to conduct short-term experimental testing of renewable energy technologies at the mobile test berth facility.

2. Test Berth Site Use

An application for a permit, license, or other authorization for the installation and use of the Northwest National Marine Renewable Energy Center mobile test berth site, is not subject to the requirements of sections B or C, above.

An experimental or test device or other structure for use at the Northwest National Marine Renewable Energy Center mobile test berth site is required to obtain any applicable license, permit or authorization.

Appendix A: Definitions and Terms

As used in Part Five, unless the context requires otherwise, the following definitions shall apply:

Applicant: An applicant for a state permit, license, lease or other authorization for renewable energy facilities development or other related structures, equipment or facilities will be referred to as "the applicant".

Areas important to fisheries: (Goal 19)

- a.) areas of high catch (e.g., high total pounds landed and high value of landed catch); or
- b.) areas where highly valued fish are caught even if in low abundance or by few fishers; or
- c.) areas that are important on a seasonal basis; or
- d.) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or
- e.) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.

Conservation: a principle of action guiding Oregon's ocean-resources management, which seeks to protect the integrity of marine ecosystems while giving priority to the protection and wise use of renewable resources over nonrenewable; as used in the Oregon Ocean Resources Management Plan, the act of conservation means "that the integrity, diversity, stability, complexity, and the productivity of marine biological communities and their habitats are maintained or, where necessary, restored" and "...accommodat(ing) the needs for economic development while avoiding wasteful uses and maintaining future availability. (Territorial Sea Plan Appendix A: Glossary of Terms)

Critical marine habitat: means one or more of the following land and water areas:

- a.) areas designated as "critical habitat" in accordance with federal laws governing threatened and endangered species; or
- b.) areas designated in the Territorial Sea Plan as either:
 - 1.) as needed for the survival of animal or plant species listed by state or federal laws as "threatened", "endangered", or "sensitive". Such areas might include special areas used for feeding, mating, breeding/spawning, nurseries, parental foraging, overwintering, or haul out or resting. This is not intended to limit the application of federal law regarding threatened and endangered species; or
 - 2.) "unique" (i.e. one of a kind in Oregon) habitat for scientific research or education within the Oregon territorial sea. (Territorial Sea Plan, Part Two)

Ecosystem: the living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are interrelated. (Oregon Statewide Planning Goals)

Habitat: the environment in which an organism, species, or community lives. Just as humans live in houses, within neighborhoods, within a town or geographic area, within a certain region,

and so on, marine organisms live in habitats which may be referred to at different scales. (see also "critical marine habitat", "important marine habitat") (Territorial Sea Plan Appendix A: Glossary of Terms)

Important marine habitat: (Goal 19) are areas and associated biologic communities that are:

- a.) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; or
- b.) needed to assure the survival of threatened or endangered species; or
- c.) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; or
- d.) essential to the life-history or behaviors of marine organisms; or
- e.) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or
- f.) unique or of limited range within the state.

Important marine habitats must be specifically considered when an inventory-and-effects evaluation is conducted pursuant to Goal 19: including but not limited to: habitat necessary for the survival and conservation of Oregon renewable resources (*e.g.* areas for spawning, rearing, or feeding), kelp and other algae beds, seagrass beds, seafloor gravel beds, rock reef areas and areas of important fish, shellfish and invertebrate concentration. (Oregon Statewide Planning Goal 19).

Phased development projects: Renewable energy facility developments which are limited in scale and area, but are designed to produce energy for commercial use.

Regulating agency or regulating agencies: State and federal agencies making decisions to authorize the siting, development and operation of renewable energy facilities development or other related structures, equipment or facilities within the Oregon Territorial Sea.

Renewable Energy Facility or Facilities: The term “renewable energy facilities development or other related structures, equipment or facilities,” means energy conversion technologies and devices that convert the energy or natural properties of the water, waves, wind, current or thermal to electrical energy, including all associated buoys, anchors, energy collectors, cables, control and transmission lines and other equipment that are a necessary component of an energy conversion device research project, demonstration project or commercial operation. The terms “renewable energy facility” or “renewable energy facilities” are used to describe any and all components of these developments.

Appendix B: Endnotes

¹ The state's renewable energy portfolio is described under ORS 469A.025, entitled "Renewable energy sources." ORS 469A.025(1) provides:

"Electricity generated utilizing the following types of energy may be used to comply with a renewable portfolio standard:

- "(a) Wind energy.
- "(b) Solar photovoltaic and solar thermal energy.
- "(c) Wave, tidal and ocean thermal energy.
- "(d) geothermal energy."

² Part One, subsections E.1 and E.2 of the Territorial Sea Plan provide a brief description of programs of certain state and federal agencies with regulatory, consultation or other authority or responsibility for management of ocean resources.

³ State and federal agencies making decisions to authorize the siting, development and operation of renewable energy facilities development or other related structures, equipment or facilities within the Oregon Territorial Sea, will be referred to as "the regulating agency" or "regulating agencies".

⁴ In its "Rules Governing the Placement of Ocean Energy Conversion Devices On, In or Over State-Owned-Land within the Territorial Sea", the Department of State Lands requires applicants to meet with the agency, as well as affected ocean users and other government agencies having jurisdiction in the Territorial Sea, prior to applying for a lease or temporary authorization. OAR 141-140-0040.

⁵ ORS 196.471, entitled "Territorial Sea Plan review requirements, provides in part:

"(1) The Land Conservation and Development Commission shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments:

"(a) Carry out the policies of ORS 196.405 to 196.515; and

"(b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals.

"(2) After making the findings required by subsection (1) of this section, the commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program."

⁶ The regulations for federal consistency with approved state coastal programs are prescribed in 15 CFR, Part 930. "Energy projects" are defined under 15 CFR § 930.123(c) to mean "projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part."

⁷ Under the National Environmental Policy Act (NEPA), "cumulative impacts" means "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 CFR § 1508.7.

⁸ One measure of whether the information provided by an applicant is sufficient are the federal consistency regulations under 15 CFR §930.58 (a), which provides “The applicant shall furnish the State agency with necessary data and information along with the consistency certification.”

⁹ Pilot Project has the same meaning as “Demonstration Project” under the Department of State Lands rules governing the placement of ocean energy conversion devices on, in, or over state-owned land within the Territorial Sea. OAR 141-140-0020(7) defines “Demonstration Project” as “a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, installation, operation, or removal of an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.”

¹⁰ Pilot projects that are authorized under the standards and conditions of this subparagraph f.2 are not required to fulfill the requirements of section C below. The standards and requirements of section C will apply to an application for authorization to expand the pilot project from a short-term limited scope facility to a commercial operation scale facility.

¹¹ Standardized monitoring protocols would result in data sets that are comparable and transferable among sites and technologies. The protocols would include a Before, After, Control, Impact (BACI) experimental study design.

¹² Example: the data and analysis will be applied to determine if conditions meet the standard established under the Oregon Department of Environmental Quality rule for “Biocriteria” at OAR 340-041-0011, which provides “Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.”

¹³ The requirement for a decommissioning plan is based upon, and will be applied by, the Department of State Lands under OAR 141-140-0080. Under subsection (5)(e) of that rule, the holder of a temporary use authorization or lessee is required to:

“Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal.”

The decommissioning of the transmission cable is required under OAR 141-083-0850(6), which provides:

“If determined necessary by [DSL] in consultation with the easement holder and other interested parties, and if permitted by the applicable federal agency(ies) regulating the cable, the easement holder shall remove the cable from the state-owned submerged and submersible land within one (1) year following the termination of use of the cable or expiration of the easement.”

¹⁴ ORS 274.867 provides in part:

“(2) Unless exempted under rules adopted by the director under this section, an owner or operator of a facility or device sited within Oregon’s territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

“(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in Oregon’s territorial sea, of the facility or device; and

“(b) Any corrective action required to be taken at the site of the facility or device.

“(3) The financial assurance requirements established by subsection (2) of this section may be satisfied by any one or a combination of the following:

“(a) Insurance;

“(b) Establishment of a trust fund;

“(c) A surety bond;

“(d) A letter of credit;

“(e) Qualification as a self-insurer; or

“(f) Any other method set forth in rules adopted by the director.”

¹⁵ The Department of State Lands rule on Pre-Application Requirements, OAR 141-140-0040, provides:

“Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with:

“(a) Department staff to discuss the proposed project; and

“(b) Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility.”



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DATE: November 5, 2009

TO: Land Conservation and Development Commission (LCDC)

FROM: Paul Klarin, Marine Affairs Coordinator

SUBJECT: **Agenda Item 5, November 5-6, 2009, LCDC meeting**

FINDINGS ON THE ADOPTION OF PROPOSED ADMINISTRATIVE RULE TO AMEND THE TERRITORIAL SEA PLAN

I. AGENDA ITEM SUMMARY

The Territorial Sea Plan review requirements are prescribed under ORS 196.471(1). The statute requires the Land Conservation and Development Commission (LCDC) to review amendments recommended by the Ocean Policy Advisory Council (OPAC) and make findings that those amendments carry out the policies of ORS 196.405 to 196.515 and are consistent with applicable statewide planning goals, emphasizing the coastal goals, prior to adopting them as part of the plan. In this instance, Goal 19 Ocean Resources, OAR 660-015-0010(4), contains the applicable policies and implementation requirements.

For more information about this agenda item, contact Paul Klarin at (503) 373-0050 ext. 249, or by e-mail at paul.klarin@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission make a finding that the proposed amendment to the Territorial Sea Plan, Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, carries out the policies of ORS 196.405 to 196.515 and is consistent with the applicable statewide planning goals, specifically Goal 19 Ocean Resources.

III. BACKGROUND AND HISTORY

Governor Kulongoski issued Executive Order No. 08-07, instructing the department to seek recommendations from OPAC concerning the appropriate amendments to Oregon's Territorial Sea Plan (TSP) reflecting comprehensive plan provisions on wave energy siting projects, and that the final amendment recommendations are provided to LCDC on or before December 1, 2009. OPAC established a Territorial Sea Plan Workgroup to consider

the proposed amendment in late 2008 and forwarded a draft version of the amendment to the department on May 15, 2009.

On December 5, 2008, the commission appointed the Territorial Sea Plan Advisory Committee (TSPAC) to assist the department in the development and to recommend an amendment to the TSP for renewable energy development in the territorial sea. Based on the draft amendment provided by the OPAC workgroup, TSPAC developed a final draft version of the amendment, Part Five of the Territorial Sea Plan: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities. On September 11, 2009, TSPAC unanimously recommended that draft for consideration by the commission. OPAC conducted their final review of the proposed amendment at its meeting in Florence on October 23, 2009, and recommended that the commission adopt the amendment.

IV. ANALYSIS OF THE PROPOSED RULE TO AMEND THE TERRITORIAL SEA PLAN

The proposed rule amends OAR chapter 660, division 36, Ocean Planning, by creating a new section to the rule numbered 660-036-0005. The text of the proposed rule will incorporate a new part into the State of Oregon Territorial Sea Plan by reference as follows:

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan entitled Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, that the Ocean Policy Advisory Council recommended on October 23, 2009.

The proposed rule represents the first of two phases to amend the TSP. The map portion of the plan, which will identify areas within the territorial sea that are appropriate for renewable energy development, will be submitted as a recommended amendment at a later date. OPAC and the department will conduct the same type of development and review process followed to produce the text portion Part Five for the data compilation and spatial analysis that is needed to produce the maps. Pursuant to ORS 196.485, upon adoption and incorporation into the plan, state agencies must apply the new requirements of the TSP. Further, upon federal approval, Part Five becomes applicable as state enforceable policies under the NOAA rules (15 CFR Part 930) implementing the federal consistency provisions of the Coastal Zone Management Act. (16 USC §§ 1451 to 1465).

The following analysis of Part Five is divided into the four sections of the new chapter; (A) Renewable Energy Facilities Development, (B) Implementation Requirements, (C) Operation Plan Development, and (D) Northwest National Marine Renewable Energy Center Mobile Test Berth Site. Part Five also includes Appendix A: Definitions and Terms and Appendix B: Endnotes, both of which contain references for the specific statutory and rule text that are used in the document.

Section (A) Renewable Energy Facilities Development

This section of Part Five contains (A) (1) Background information and (A) (2) Policies. The background information establishes the context for Part Five and provides that the policies and implementation requirements are mandatory “notwithstanding Part One, paragraph F.1.b” of the Plan which address Mandatory or Discretionary Provisions of the Plan.

The Policies of Part Five are derived directly from those already established by Goal 19, Ocean Resources, the Territorial Sea Plan, Part One, section (G) Ocean Management Goals and Policies, and ORS 196.420. Those policies are predicated on the protection and conservation of renewable marine resources (i.e. living marine organisms) and ecosystem function and integrity for the long-term ecological, economic and social values and benefits. All three prioritize the protection of renewable resources over non-renewable resources. Goal 19 and the TSP, Part One, section (G) provide specific standards for achieving those policies, which are incorporated into the policies under Part Five as follows:

- a. Maintain and protect renewable marine resources (i.e. living marine organisms), ecosystem integrity, marine habitat and areas important to fisheries from adverse effects that may be caused by the installation or operation or removal of renewable energy facility by requiring that such actions:*
 - 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the marine ecosystem and coastal communities, and give first priority to the conservation and use of renewable marine resources;*
 - 2.) Minimize effects by limiting the degree or magnitude of the action and its implementation;*
 - 3.) Rectify or mitigate the effects that occur during the lifetime of the facility by monitoring and taking appropriate corrective measures through adaptive management; and*
 - 4.) Restore the natural characteristics of a site to the extent practicable when the facility and structures are decommissioned and removed.*
- b. Protect marine renewable resources, the biological diversity and functional integrity of marine ecosystem, important marine habitat, areas important to fisheries, navigation, recreation and aesthetic enjoyment as required by Statewide Planning Goal 19.*

Goal 19, Implementation Requirements, (2) Management Measures (d) and (f) and the Territorial Sea Plan, Part One, section (G) Policy 3: Management Measures (5), (6), and (7), require coordination between state and federal agencies and the involvement of local governments and stakeholders, and are incorporated as follows into the Part Five, section (A)(2) Policies under:

- c. Promote direct communication and collaboration between an applicant for a state or federal authorization for the siting, development and operation of renewable energy facilities and affected ocean users and coastal communities to reduce or avoid conflicts. Agencies will strongly encourage applicants to engage with local, state and federal agencies, community stakeholders, tribal governments and affected ocean users in a collaborative agreement-seeking process prior to formally requesting authorization to initiate a project. (endnote omitted).*

Goal 19, Implementation Requirements (2) Management Measures (a) and (g) and the Territorial Sea Plan, Part One, section (G) Policy 3: Management Measures (2), (3), and (8), require taking a precautionary approach and the use of adaptive management and conditional approvals to ensure the protection of ocean resources, and are incorporated as follows into the Part Five Policies under:

- d. Limit the potential for unanticipated adverse impacts by requiring, as necessary, the use of pilot projects and phased development to collect data and study the effects of the development on the affected marine resources and uses.*

Goal 19 and the TSP both seek the use of marine resources for the purpose of providing long-term ecological, economic and social value and benefits. The policies articulated under ORS 196.420(5) specifically “encourages research and development of new, innovative marine technologies to study and utilize ocean resources.” These policies are incorporated as follows into the Part Five Policies under:

- e. Facilitate the research and responsible development of ocean-based renewable energy sources including wave, tidal and wind, that meet the state’s need for economic and affordable sources of renewable ocean energy.*

Section (B) Implementation Requirements

This section of the plan replaces the use of Territorial Sea Plan Part Two: Making Resource Use Decisions, sections (A) and (B) for the review and approval of renewable energy facility developments by state and federal agencies. Section (B) subsections 1 through 4 are related to the scope of authority, state agency review process, intergovernmental coordination, and resource inventory and effects evaluation. This section is a further enunciation of those existing requirements, and also incorporates policies under Goal 19, Implementation Requirements (2) Management Measures and the Territorial Sea Plan, Part One, section (G) Policy 3: Management Measures, for application of a cumulative effects assessment, adaptive management and the precautionary approach to resource management.

Subsection 1, “Siting: areas designated for renewable energy facilities development,” establishes the scope of the area to which the TSP applies consistent with Goal 19 Ocean Resources, and reiterates the authority of the Department of Land Conservation and Development under ORS 196.435(1) in the application of the federal consistency provisions of the federal Coastal Zone Management Act to federal activities related to these projects.

Subsection 2: State Agency Review Process, establishes the process by which state agencies will coordinate their activities related to regulating ocean renewable energy development through a joint agency review team (JART), and contains the authorization for that process within the section as:

“Pursuant to ORS 196.485 and ORS 197.180, state agencies shall apply the policies and provisions of the Oregon Ocean Resources Management Plan and Territorial Sea Plan, and Goal 19 Ocean Resources as required to conform with State Agency Coordination Programs (OAR chapter 660, divisions 30 and 31).”

Subsection 3: Project Review Process and Coordination articulates the function and scope of the JART process and establishes the requirement for an applicant to communicate and coordinate their efforts with local communities and stakeholders. This requirement is based on the Goal 19, Implementation Requirements (2) Management Measures (e) and (f) and the Territorial Sea Plan, Part One, section (G) Policy 3: Management Measures (6) and (7), both of which provide for Regional Cooperation and Governance and Public Involvement.

Subsection 4: Resource Inventory and Effects Evaluation Standards, contains standards for conducting a resource inventory and effects evaluation that are specifically designed to address the full range of potential effects that may be associated with the development and operation of a renewable energy facility in the territorial sea. The inventory criteria and evaluation standards contained in Section (B) are derived directly from Part Two of the Territorial Sea Plan and the Goal 19, Implementation Requirements (1) Uses of Ocean Resources, which details the marine resources, functions, uses and values that are protected.

The inventory content standards of this subsection include: the facility operational footprint including associated structures and utilities; the physical properties of the development location; bathymetry and topography; geologic structure; biological features; cultural, economic and social uses; historic, cultural or archeological resources; and other data as determined necessary to evaluate the particular proposed project.

Subsection (e), the written evaluation, provides the standard for preparing an analysis of the inventory content information that describes the potential short and long term effects of the proposed development. The categories of potential effects that an applicant must evaluate are the biological and ecological effects; current uses; natural and other hazards; and cumulative effects.

This section also provides an opportunity to proceed with pilot projects or phased development to obtain information when there is a lack of data available to address those potential effects. This subsection applies the Goal 19 and TSP management measures that require the use of adaptive management, precautionary approach, as well as those that allow for conditional approvals and actions.

Section (C) Operation Plan Development

This section establishes a requirement for applicants to provide specific plans for the development and operation of a proposed renewable energy facility as a condition of

obtaining state permit, license, lease or authorization. Applicants are required to provide plans for: each phase of the development; facility design and construction; facility operation and maintenance; emergency contingency; safety inspection; monitoring environmental effects; adaptive management; facility decommissioning, financial assurances; and agreements with other ocean users and stakeholders. The underlying authority for this set of requirements is derived from the Goal 19, specifically those under Implementation Requirements (1) Uses of Ocean Resources; (2) Management Measures; and, (3) Contingency Plans; and from the Territorial Sea Plan, Part One, section (G) Policy 3: Management Measures (1) Cumulative Effects Assessment, (2) Adaptive Management, (3) Conditional Approvals or Actions, (8) Contingency Plans and (9) Precautionary Approach.

Section (D) Northwest National Marine Renewable Energy Center Mobile Test Berth Site. This section is specifically designed to accommodate the siting and use of this national research center. ORS 196.420(5) specifically “encourage[s] research and development of new, innovative marine technologies to study and utilize ocean resources.” The requirements of Goal 19 and the TSP will apply to the siting and permitting of any uses within the test berth site. The use a the test berth site for research is compliant with Goal 19 Implementation Requirements (2)(c) Special Management Area Plans and Territorial Sea Plan, Part One, section (G) Policy 3: Management Measure (4) Special Area Management Plans.

Appendix A: Definitions and Terms

The definition of an “applicant” for a state permit, lease or license, and the definition for a “renewable energy facility” are provided in this section. All other terms listed in the section are derived from the definitions already given them in the TSP or in Goal 19 Ocean Resources.

Local Comprehensive Plan Compatibility

The Territorial Sea Plan, Part One, paragraph (F)(1)(b), and ORS 196.465, require that this Part Five amendment is compatible with acknowledged city and county comprehensive plans. Part Five provides the procedural and substantive requirements for use of the territorial sea for the development of renewable energy facilities and related infrastructure. As such, Part Five applies to areas of the territorial sea. Although county boundaries extend to the western boundary of the state, planning for ocean resources and for submerged and submersible lands of the territorial sea is accomplished under the Oregon Ocean Resource Management Act and not through county (or city) comprehensive plans. ORS 201.370. As such, no acknowledged comprehensive plan contains enforceable provisions with which Part Five is not compatible. ORS 196.465(2) requires OPAC to work with the department and the Oregon Coastal Zone Management Association (OCZMA) to meet and consult with local officials, distribute materials and solicit comments and provide information about the ocean resource issues. OPAC and OCZMA incorporated input from numerous public meetings about the proposed amendment to the TSP into their recommendations on the amendment.

V. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The commission is required to review OPAC recommended amendments to the TSP under ORS 196.471(1). The commission reviews the recommended amendments and makes findings that the recommendations carry out the policies of the Oregon Ocean Resource Management Act and are consistent with the applicable statewide planning goals. After making such findings, ORS 196.471(2) requires the commission to adopt the proposed amendments. In addition, the commission is authorized by ORS 197.045 to “perform other functions required to carry out ORS chapters 195, 196 and 197,” and by ORS 197.090, to coordinate “land conservation and development functions with other government entities.”

The department submitted public notices and fiscal impact statements for proposed rules to the Secretary of State, legislative leaders and selected committee chairpersons, and the public on September 15, 2009.

Although the department decided to schedule rulemaking hearings for this matter of its own accord and not in response to a request for a rulemaking hearing under ORS 183.335(3)(a), because the Part Five rulemaking arguably affects or applies to only a limited geographic area, the Department of Justice recommended that the department hold a hearing within that geographic area. The department held the public hearing in Florence on October 23, 2009, and the hearings officer reported those comments in a memorandum distributed to the commission.

VI. SUMMARY

The amendment to the Territorial Sea Plan, Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, is based on the existing policies and implementation requirements of Goal 19 Ocean Resources, the TSP and ORS 196.405 to 196.515. In addition, the OPAC and the TSPAC ensured that the requirements of Part Five would be compatible with other state and federal agency authorities and regulatory requirements that would apply to the permitting, licensing and leasing necessary to authorize the development and use of renewable energy facilities in the territorial sea.

VII. RECOMMENDATION

The department recommends that the commission adopt this staff report as the findings required to adopt the rule to amend the Territorial Sea Plan to add Part Five.

VIII. POSSIBLE MOTIONS

Recommended motion:

I move that the commission find that the Territorial Sea Plan Part Five amendment recommended by OPAC carries out the policies of the Oregon Ocean Resource Management Act and is consistent with applicable statewide planning goals; and further

that Territorial Sea Plan Part Five be adopted as part of the Oregon Coastal Management Program.

Alternative Motion:

I move that the commission find that the Territorial Sea Plan Part Five amendment recommended by OPAC does not carry out the policies of the Oregon Ocean Resource Management Act; is not consistent with applicable statewide planning goals; or both, and further that Territorial Sea Plan Part Five be returned to OPAC for revision.

ATTACHMENTS (These attachments not included in RPC.OR-2010-001)

- A. Goal 19 Ocean Resources
- B. ORS 196.405 to 575 Oregon Ocean Resources Management
- C. Territorial Sea Plan Part One and Part Two
- D. Proposed rule OAR 660-036-0005

Oregon Coastal Management Program

RPC.OR-2010-001

Item 6. Incorporation of ORS 783.620 *et seq*, Ballast Water Management, into the OCMP.

Attachment 6a. Analysis of change to enforceable policies with the addition of ORS 783.620 *et seq* to the coastal program.

Table 6-1. Summary and analysis of changes made to the enforceable policies of the Oregon Coastal Management Program through the incorporation of ORS Sections 783.620 – 783.640, 783.990(8), and 783.992.

Change	Policy	Citation	Notes	Enforcement Mechanism	Adoption Reference
ADDED	Prohibit discharge of ballast water into navigable waters of the state.	ORS 783.620		ORS 783.990(8)	2001 Legislative Session, 2001 c.722 §8
ADDED	Definitions for terms used in ORS 783.625 to 783.640.	ORS 783.625		ORS 783.992(1)	2007 Legislative Session, 2007 c.816, §2
ADDED	Define the types of vessels regulated by this law. Provides for exclusions.	ORS 783.630	[1]	ORS 783.992(1)	2007 Legislative Session, 2005 c.62, §5
ADDED	The discharge of ballast water is prohibited.	ORS 783.635(1)	[2]	ORS 783.992(1)	2007 Legislative Session, 2009 c.148, §1
ADDED	Permits the discharge of ballast water from the open sea.	ORS 783.635(2)	[3]	ORS 783.992(1)	2007 Legislative Session, 2009 c.148, §1
ADDED	Requires reports of ballast water discharge as required by ORS 783.640.	ORS 783.635(3)		ORS 783.992(1)	2007 Legislative Session, 2009 c.148, §1

Change	Policy	Citation	Notes	Enforcement Mechanism	Adoption Reference
ADDED	Reporting ballast water management actions.	ORS 783.640	[4]	ORS 783.992(2)	2009 Legislative Session, 2009 c.144, §1
ADDED	Penalties, criminal.	ORS 783.990(8)	[5]	[7]	1999 Legislative Session, 1999 c.1051, §227
ADDED	Penalties, civil.	ORS 783.992	[6]	[7]	2009 Legislative Session, 2009 c.144, §1

Notes

[1] ORS 783.625 to 783.640 applies to all vessels carrying ballast water in the waters of the state except when the discharge poses no serious threat of introducing exotic invasive species to Oregon waters. Specifically, the sections do not apply when:

- the ballast water is discharged in the same location it was acquired;
- the vessel does not discharge any ballast water;
- the vessel operates solely on internal waters (i.e., lakes);
- a vessel enters the territory of the US but not the waters of the state;
- a vessel discharges water from the Pacific Ocean near Oregon;
- the discharged ballast water has been treated to remove organisms.

[2] Prohibits the discharge of ballast water except in certain circumstances specified in subsection ORS 783.635(2).

[3] Ballast water may be discharged if the vessel has performed an open-sea exchange procedure. Open sea exchange is not required if (i) such a procedure was deemed unsafe, (ii) such a procedure was not technically feasible, or (iii) the discharge into Oregon waters was only that required for the operation of the vessel; or if the discharge is conducted in a manner consistent with standards and procedures adopted by the Environmental Quality Commission.

[4] Specifies when and how reports on ballast water management shall be made to the Department of Environmental Quality.

[5] Specifies criminal penalties for violations of ORS 783.620.

[6] Specifies civil penalties for violations of ORS 783.625 to 783.640.

[7] These are the enforcement mechanisms.

All text is incorporated into the Oregon Coastal Management Program except portions of 783.990 which are in ~~strike through~~ text. Enforceable policies and enforcement mechanisms are detailed in the accompanying Table 6-1.

BALLAST WATER

783.620 Discharge of ballast in navigable waters. Except as provided in ORS 783.635, a person may not discharge the ballast of any vessel into the navigable portions or channels of any of the bays, harbors or rivers of this state, or within the jurisdiction of this state, so as to injuriously affect such portions or channels of such bays, harbors or rivers, or to obstruct navigation thereof. [Formerly 783.600]

783.625 Definitions for ORS 783.625 to 783.640. As used in ORS 783.625 to 783.640, unless the context requires otherwise:

(1) “Ballast water” means any water used to manipulate the trim and stability of a vessel.

(2) “Cargo vessel” means a ship in commerce that is equipped with ballast tanks, other than a tank vessel or a vessel used solely for commercial fish harvesting, of 300 gross tons or more.

(3) “Coastal exchange” means exchanging the ballast water taken onboard at a North American coastal port at a distance of at least 50 nautical miles from land and at a depth of at least 200 meters.

(4) “Department” means the Department of Environmental Quality.

(5) “Oil” means oil, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and any other petroleum related product.

(6) “Open sea exchange” means a replacement of ballast water that occurs in an area no less than 200 nautical miles from any shore.

(7) “Passenger vessel” means a ship of 300 gross tons or more carrying passengers for compensation.

(8) “Sediment” means any matter that settles out of ballast water.

(9) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

(10) “Tank vessel” means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue other than:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(11) “Vessel” means a tank vessel, cargo vessel or passenger vessel.

(12) “Voyage” means any transit by a vessel destined for any Oregon port.

(13) “Waters of this state” means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean that is in the boundaries of Oregon. [2001 c.722 §1; 2003 c.692 §1; 2005 c.62 §2; 2007 c.816 §2]

783.630 Application; exclusions. (1) ORS 783.625 to 783.640 apply to all vessels carrying ballast water into the waters of this state from a voyage, except a vessel that:

(a) Discharges ballast water only at the location where the ballast water originated, if the ballast water is not mixed with ballast water from areas other than open sea waters;

(b) Does not discharge ballast water in waters of this state;

(c) Traverses only the internal waters of this state;

(d) Traverses only the territorial sea of the United States and does not enter or depart an Oregon port or navigate the waters of this state;

(e) Discharges ballast water that originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude on the west coast of North America; or

(f) Discharges ballast water that has been treated to remove organisms in a manner that is approved by the United States Coast Guard.

(2) ORS 783.625 to 783.640 do not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal or international laws or regulations. Ballast water containing oil or noxious liquid substances shall be discharged in accordance with the requirements applicable to those substances.

(3) Nothing in this section:

(a) Requires an open sea or coastal exchange if the owner or operator in charge of a vessel determines that performing an open sea or coastal exchange would threaten the safety or stability of the vessel or the safety of the vessel's crew or passengers because of any extraordinary condition, including but not limited to adverse weather, vessel design limitations or equipment failure.

(b) Exempts the owner or operator in charge of a vessel from the reporting requirements under ORS 783.640, whether or not ballast water is carried or discharged in the waters of this state. [2001 c.722 §2; 2003 c.692 §2; 2005 c.62 §5]

783.635 Discharge of ballast water prohibited; exemption; rules; aquatic invasive species. (1) Except as authorized by this section, the discharge of ballast water in the waters of this state is prohibited.

(2) An owner or operator of a vessel may discharge ballast water in the waters of this state:

(a) If the owner or operator has conducted a complete open sea or coastal exchange of ballast water prior to entering the waters of this state. The open sea or coastal exchange must be performed using either of the following methods:

(A) Flow-through exchange. A flow-through exchange occurs when an amount of ocean water equal to or exceeding three times the capacity of the vessel's ballast water tank is pumped into an opening in the ballast water tank while the existing ballast water is discharged through another opening.

(B) An empty and refill exchange. An empty and refill exchange occurs when a ballast water tank is pumped empty to the point that the pump loses suction and then is refilled with ocean water.

(b) Without performing an open sea exchange or a coastal exchange of ballast water if:

(A)(i) The owner or operator reasonably believes that an exchange would threaten the safety of the vessel; or

(ii) The exchange is not feasible due to vessel design limitations or equipment failure; and

(B) The vessel discharges only the amount of ballast water that is operationally necessary.

(c) If the ballast water is discharged in a manner consistent with standards and procedures adopted by the Environmental Quality Commission under subsection (4) of this section.

(3) An owner or operator who discharges ballast water in the waters of this state under subsection (2)(b) of this section is subject to the reporting requirements under ORS 783.640.

(4)(a) The Environmental Quality Commission may adopt by rule standards and procedures that the commission considers necessary to carry out the provisions of ORS 783.625 to 783.640. The standards and procedures must minimize the risk of introducing aquatic invasive species into the waters of this state and must be based on the availability of treatment technology. Rules adopted under this subsection include, but are not limited to:

(A) Standards for the discharge of ballast water into the waters of this state and appropriate timelines for the implementation of the standards. In adopting the standards, the commission shall consider the extent to which treatment technology is feasible, practicable and commercially available, or expected to be available, by the proposed implementation timelines.

(B) Emergency response procedures for managing high-risk ballast water. The rules must define high-risk ballast water in light of the source of the water and other applicable factors. The procedures must establish notification and consultation requirements, as well as feasible alternative ballast water management strategies.

(C) Procedures for implementing alternative ballast water management strategies for the exemptions specified in subsection (2)(b) of this section.

(b) To the extent practicable, the commission shall adopt rules under this subsection consistent with relevant rules adopted by the States of California and Washington. [2001 c.722 §3; 2005 c.62 §3; 2009 c.148 §1]

(Temporary provisions relating to Shipping Transport of Aquatic Invasive Species Task Force)

Note: Sections 2 to 4, chapter 148, Oregon Laws 2009, provide:

Sec. 2. In adopting rules under ORS 783.635, the Environmental Quality Commission shall consult with the Shipping Transport of Aquatic Invasive Species Task Force created under section 3 of this 2009 Act. [2009 c.148 §2]

Sec. 3. (1)(a) There is created the Shipping Transport of Aquatic Invasive Species Task Force.

(b) The President of the Senate and the Speaker of the House of Representatives shall each appoint two members from among members of the Legislative Assembly to serve in an advisory capacity to the task force.

(c) The Director of the Department of Environmental Quality may appoint members to the task force to provide equitable representation from individuals who represent the interests of this state and federal, State of Washington, maritime industry, environmental and academic interests.

(2) The purpose of the task force is to study and make recommendations:

(a) For combating the introduction of aquatic nonindigenous species associated with shipping-related transport into the waters of this state;

(b) For identifying sources of funding to support and maintain the ballast water program established in ORS 783.625 to 783.640; and

(c) For changes to the ballast water program established in ORS 783.625 to 783.640, including but not limited to the following considerations:

(A) Shipping industry compliance with ORS 783.625 to 783.640;

(B) Practicable and cost-effective ballast water treatment technologies;

(C) Appropriate standards for discharge of treated ballast water into the waters of this state;

(D) The compatibility of ORS 783.625 to 783.640 with new laws enacted by the United States Congress, regulations promulgated by the United States Coast Guard and ballast water management programs established by the States of Alaska, California and Washington and the Province of British Columbia;

(E) Practicable and cost-effective techniques to combat the introduction of aquatic nonindigenous species associated with shipping-related transport into the waters of this state; and

(F) Appropriate regulations and standards to combat the introduction of aquatic nonindigenous species associated with shipping-related transport into the waters of this state.

(3) The Department of Environmental Quality may provide staff support or coordination assistance to the task force.

(4) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

(5) A majority of the members of the task force constitutes a quorum for the transaction of business.

(6) Official action by the task force requires the approval of a majority of the members of the task force.

(7) The task force shall elect one of its members to serve as chairperson.

(8) The task force shall submit a report, including recommendations for legislation, to an interim committee of the Legislative Assembly related to natural resources no later than June 1, 2010.

(9) Notwithstanding ORS 171.072, members of the task force who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the task force. Other members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(10) As used in this section:

(a) "Aquatic nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range.

(b) “Waters of this state” has the meaning given that term in ORS 783.625. [2009 c.148 §3]

Sec. 4. Section 3 of this 2009 Act is repealed on January 2, 2012. [2009 c.148 §4]

783.640 Reporting of ballast water management. (1) Owners or operators of vessels regulated under ORS 783.625 to 783.640 must report ballast water management information to the Department of Environmental Quality:

(a) For voyages greater than 24 hours in length, at least 24 hours prior to entering the waters of this state; or

(b) For voyages less than 24 hours in length, prior to departing the port or place of departure.

(2) The department may work with maritime associations and any national ballast information clearinghouse to establish the manner and form of the reporting required under this section.

(3) The department may verify compliance with ORS 783.625 to 783.640 by:

(a) Relying on tests conducted by the United States Coast Guard or on other tests determined to be appropriate by the department.

(b) Boarding and inspecting vessels regulated under ORS 783.625 to 783.640 and collecting samples of ballast water as part of the inspection. [2001 c.722 §4; 2005 c.62 §4; 2009 c.144 §1]

PENALTIES (Subsection 8 only)

~~**783.990 Penalties.** (1) Violation of ORS 783.510 is punishable, upon conviction, in a justice or circuit court, by a fine of not less than \$50 nor more than \$200, or by imprisonment in the county jail for not less than one nor more than six months, or both.~~

~~—— (2) Violation of ORS 783.520 is punishable, upon conviction, in a justice or circuit court, by a fine of not less than \$50 nor more than \$250, or by imprisonment in the county jail for not less than 60 days nor more than six months.~~

~~—— (3) Violation of ORS 783.530 is punishable, upon conviction, in a justice or circuit court, by a fine of not less than \$20 nor more than \$200, or by imprisonment in the county jail for not less than 10 nor more than 100 days.~~

~~—— (4) Violation of ORS 783.550 is punishable, upon conviction, in a justice or circuit court, by a fine of not less than \$20 nor more than \$100 or by imprisonment in the county jail for not less than 10 nor more than 100 days, or both.~~

~~—— (5) Violation of ORS 783.560 by any officer is a Class D violation.~~

~~—— (6) Violation of ORS 783.580 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$250, and by imprisonment in the county jail not less than 10 nor more than 25 days. Justices of the peace have jurisdiction of violations of ORS 783.580.~~

~~—— (7) Violation of ORS 783.590 and injury or damage of any bridge across the Willamette River for want of the appliances described in ORS 783.590 is a Class A violation.~~

(8) Violation of ORS 783.620 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than three months nor more than one year.

~~———— (9) Violation of ORS 783.610 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$200, or by imprisonment in the county jail not less than one nor more than six months, or both. [Amended by 1953 c.113 §2; 1997 c.249 §224; 1999 c.1051 §227]~~

783.992 Civil penalties. (1) Except as provided in subsection (2) of this section, the Director of the Department of Environmental Quality may impose a civil penalty on the owner or operator of a vessel for failure to comply with the requirements of ORS 783.625 to 783.640. The penalty imposed under this section may not exceed \$5,000 for each violation. In determining the penalty imposed, the director shall consider whether the violation was intentional, negligent or without any fault and shall consider the quality and nature of risks created by the violation. The owner or operator of a vessel subject to such a penalty may contest the determination by requesting a hearing under ORS 183.413 to 183.470.

(2) The civil penalty for a violation of the reporting requirements of ORS 783.640 may not exceed \$500 per violation. [2001 c.722 §7; 2005 c.62 §6]

Note: The amendments to 783.992 by section 16, chapter 267, Oregon Laws 2009, become operative January 1, 2011, and apply to violations occurring on or after January 1, 2011. See sections 17 and 19, chapter 267, Oregon Laws 2009. The text that is operative on and after January 1, 2011, is set forth for the user's convenience.

783.992. As specified in ORS 468.140, the Director of the Department of Environmental Quality may impose a civil penalty on the owner or operator of a vessel for failure to comply with the requirements of ORS 783.625 to 783.640.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

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<http://www.oregon.gov/LCD/OCMP>



PUBLIC NOTICE

April 16, 2010

To: Interested Persons
Local Governments
State Agencies
Federal Agencies

From: Robert J. Bailey, Manager
Oregon Coastal Management Program

Subject: Routine Program Change, First Public Notice

The Oregon Department of Land Conservation and Development (DLCD) submits changes to the state statutes, administrative rules, and comprehensive plans and land use regulations comprising the Oregon Coastal Management Program (OCMP) to the federal Office of Ocean and Coastal Resource Management (OCRM), a division of the National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) of the US Department of Commerce. Federal regulations (15 CFR 923) require review and concurrence by OCRM of proposed program changes prior to incorporation into the state's federally approved program. Routine program changes are actions which further detail a state coastal management program and do not result in a substantial change to one or more of the program areas in subparts B through F of 15 CRF 923. This notice complies with the requirements of 15 CFR 923.84(b)(2).

Actions

With this notice, DLCD submits the following program changes to OCRM for review as routine program changes:

- Item 1. Updates to the Oregon Ocean Resources Management Act (ORMA; ORS 196.405 -.515)
- Item 2. Changes to Statewide Planning Goal 18, Beaches and Dunes
- Item 3. Addition of Oregon Revised Statutes 274.867 to the Oregon Coastal Management Program
- Item 4. Adoption of the new Part 5 of the Oregon Territorial Sea Plan (TSP).

- Item 5. Adoption of new Paragraph 5, Division 36, Chapter 660 of the Oregon Administrative Rules (OAR 660-036-0005)
- Item 6. Addition of ORS 783.620 to the Oregon Coastal Management Program

Background

The federal Coastal Zone Management Act of 1972 (CZMA), as amended, establishes a program to encourage the establishment of state coastal resource management programs. The CZMA is administered by the OCRM. The OCMP was approved by the Secretary of Commerce in 1977, and is supported by federal grant assistance.

The OCMP carries out the provisions of Oregon's State-wide Land Use Planning Program (ORS Chapter 197), as well as various statutory authorities administered by other state agencies within Oregon's networked program. As lead agency for the OCMP, the DLCD is responsible for coordination with OCRM. This responsibility includes the submission of Routine Program Changes for all components of the OCMP, including statutes and programs not administered by the DLCD.

Federal Consistency

Following NOAA's concurrence with the proposed changes, DLCD will incorporate them into the approved program. After the DLCD publishes public notice of OCRM's concurrence, as required by 15 CFR 923.84(b)(4), consistency with the program changes becomes a requirement for federal agencies taking certain actions that impact the state's coastal zone (ref. CZMA Sec 307(c)). These actions include permits issued by the Army Corps of Engineers under Section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899. Actions by federal agencies and some actions receiving federal funds are also subject to federal consistency requirements. Interested parties are encouraged to contact DLCD at the address given below for a complete list of federal actions subject to consistency.

Program Changes

The DLCD must submit changes to the OCMP pursuant to the CZMA Section 306(e) (16 USC 1455(e); 15 CFR 923.84). OCRM reviews the proposed changes to determine if they are substantial changes to the enforceable policies or authorities of the OCMP. Routine program changes, or RPCs, are defined in 15 CFR 923.84 as actions that do *not* result in a substantial change to any of the following five elements upon which the OCMP received federal approval. Those five elements, as defined in 15 CFR 923 subparts B through F, are:

1. Uses subject to the management program;
2. Special management areas;
3. Boundaries;
4. Authorities and organization;

5. Coordination, public involvement, and the national interest.

Based on the criteria, the DLCD has determined that the actions listed above should be incorporated into the OCMP as routine program changes.

Solicitation of Comments

The actions listed above have been submitted to OCRM as an RPC, complete with a summary and analysis of the changes to the OCMP. The proposed program changes will be posted on the DLCD website at

http://www.oregon.gov/LCD/OCMP/PublicNotice_Intro.shtml

Copies may also be obtained by writing to

Jay Charland
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol St NE, Ste 150
Salem, Oregon 97301
Email: jay.charland@state.or.us
Phone: (503) 373-0050 x253
Fax: (503) 378-6033 fax

Interested persons have three weeks from the date of this notice to submit their comments to OCRM on whether or not the actions listed above are routine program changes under 15 CFR 923.80 (ref 15 CFR 923.84(b)(2)(C)). Comments should be submitted to:

Mr. John King, Chief
Coastal Programs Division
NOAA/OCRM/CPD
N/ORM3, 11th Floor
1305 East-West Hwy
Silver Spring, MD 20910