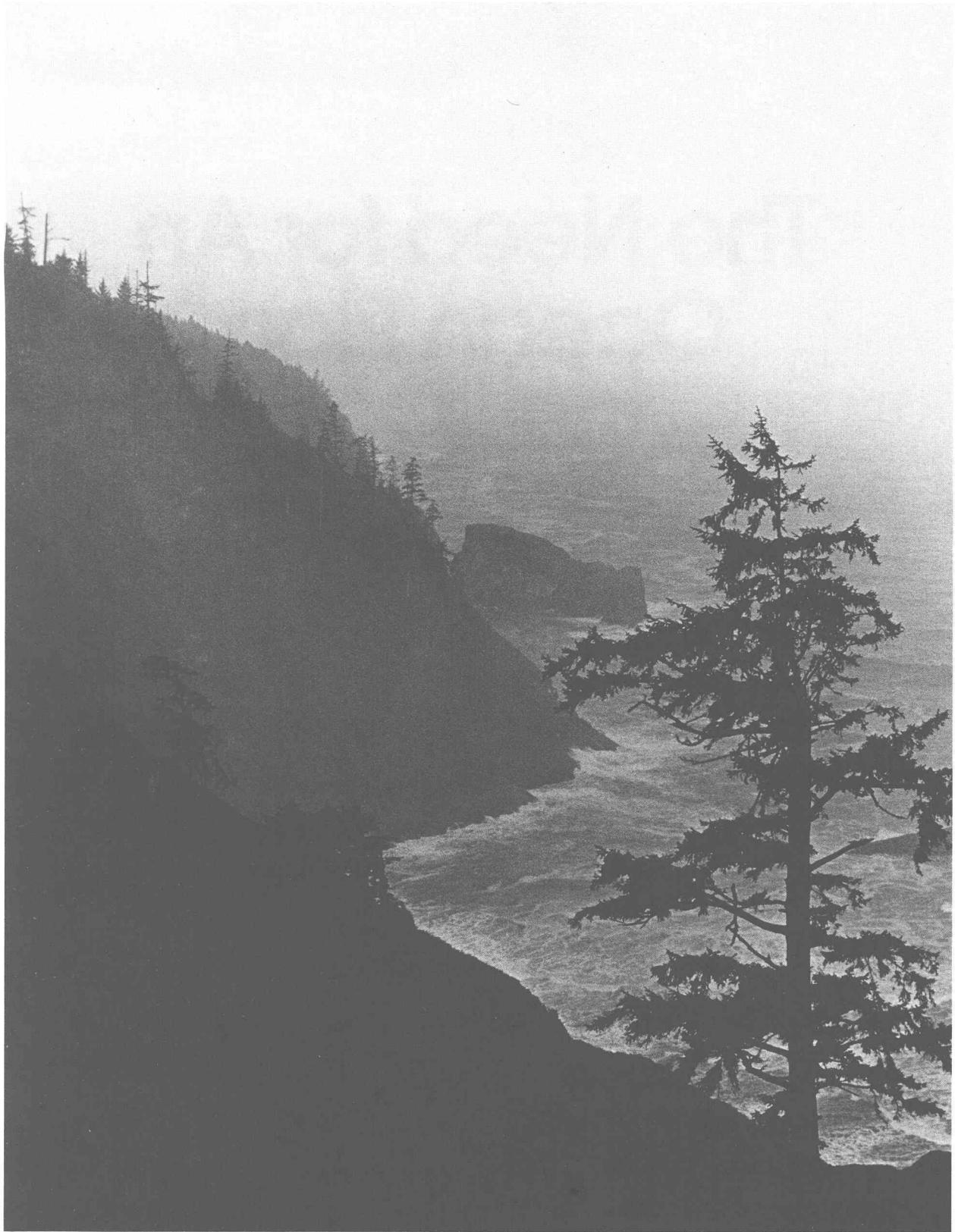


# The Need for An Ocean Plan

Driving Forces for Ocean Planning	3
Legislative Action	5
Jurisdictions at Sea	11

2 • *Oregon's Ocean Resources Management Plan*



## Driving Forces for Ocean Planning

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**T**wo sets of forces sparked Oregon's ocean resource planning. First, the Oregon coast and Pacific Ocean are important to Oregonians. Commercial and recreational fisheries, transportation and navigation, clean air and water and recreation are all ocean uses upon which coastal communities rely for their livelihoods and way of life. Oregonians care deeply that the coastal environment be protected and traditional use of renewable resources be maintained. Oregon's state agencies and local governments have control over many of the uses and resources along the coast and within the state's three-mile territorial sea.

Second, national and international forces outside Oregon inject new demands for ocean and coastal resources into the present mix. Global political and economic forces, beyond the control of the state, affect the price and supply of oil, gas, and mineral resources and can generate interest in exploring Oregon's ocean for these resources. The Oregon coast is increasingly attractive as a recreation destination and retirement home for people from congested urban areas with deteriorating environmental conditions. Oregon's ocean fisheries are intertwined with global market demands and the industrialized nature of major international fishing fleets which can affect the marine food chain across vast stretches of ocean. These forces will bring change to

Oregon's ocean and shoreline, regardless of how well the state is prepared.

Overarching both these sets of forces is the growing public concern about the quality of the marine environment. There are increasing demands for national and coastal state governments to step up efforts to protect human health, conserve ocean resources and preserve environmental quality. Coastal states, responding to public concerns, are initiating ocean resources management programs to ensure that state and local interests in ocean resources are protected.

Oregon is now faced with the responsibility of managing a range of ocean uses in its territorial sea and coordinating with federal agencies for management beyond. Until now, such

## 4 • Oregon's Ocean Resources Management Plan

uses either coexisted without conflict or conflicts were managed on a case-by-case basis. Balancing the demands created by new uses will demand an adaptive, equitable manage-

ment program that is based on clear policies and uses an open process involving all interested parties.



*The Pacific Ocean challenges the coast north of Cape Perpetua. The town of Yachats lies in the middle distance. (ODOT photo)*

## Legislative Action for Ocean Planning

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**T**he 1987 Oregon Legislature, through Senate Bill 630, the Oregon Ocean Resources Management Act, created the Oregon Ocean Resources Management Program. The purpose of the program is to plan for the coordinated, comprehensive management of ocean uses and resources off the Oregon coast. The law links together state agency programs, federal programs, local government interests, and public concerns into a coordinated planning and management program. The Act established the Oregon Ocean Resources Management Task Force, and charged it with the assignment of developing an Oregon Ocean Resources Management Plan. The plan was presented to the Oregon Legislature on June 1, 1990, and adopted by the Land Conservation and Development Commission by August 1, 1990, as part of Oregon's Coastal Management Program.

The Act addresses more than an Ocean Plan. It is a statement of Legislative concern that the resources of the Pacific Ocean are important to Oregon and that the state must be prepared to properly respond to increased and new uses of ocean resources. The legislature found that while many state agencies have responsibilities for different resources or uses, there was no policy framework for coordinated, consistent state policy. Likewise, the Legislature determined that federal law and the new U.S. Exclusive Economic Zone provided the state with the opportunity and responsibility to assert the state's interests as a partner with

federal agencies in managing ocean resources within 200 miles of the coast.

### Legislative Policies

The Legislature provided a policy framework to guide the ocean planning work. The primary policy builds on the foundation of Statewide Planning Goal 19, *Ocean Resources*, and asserts that Oregon will

*... 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 non-renewable resources.*

Other policies of the legislature are to

*Encourage ocean resources development which is environmentally sound and economically beneficial;*

*Provide for efficient and coordinated ocean resources management through improvement of the state's coastal management program and state-wide land use program;*

*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 the continental shelf;*

*Promote research, study and understanding of ocean processes, marine life and other ocean resources to acquire the scientific inventory information necessary to understand the impacts and relationship of ocean development activities to ocean and coastal resources;*

*Encourage research and development of new innovative marine technologies for exploration and utilization of ocean resources.*

## Ocean Program

To implement these policies, the Legislature established a four-part Ocean Resources Management Program to "provide for efficient and coordinated ocean resources management through improvement of the state's coastal management program and state-wide land use program." The Ocean Program includes:

- Those parts of the existing federally approved Oregon Coastal Management Program which pertain to ocean and coastal resource conservation and development, including local government comprehensive plans. Especially important are the estuary management plans and coastal shorelands planning and zoning measures adopted by coastal counties and cities.
- The Ocean Task Force and any successor. This broad interagency process is crucial to addressing complex ocean management issues. The Ocean Plan proposes an Ocean Policy Advisory Council to succeed the Task Force.
- The Ocean Resources Management Plan and future refinements such as the plan for

Oregon's Territorial Sea outlined in the Ocean Plan.

- State agency programs for regulation of ocean uses and activities.

The Ocean Resource Management Plan and the other parts of the Ocean Program provide Oregon with a policy framework and a process to draw together the various participants needed to focus on ocean resource issues. Oregon will also have an open, cooperative process involving the public and ocean users to resolve ocean policy issues. As part of the Oregon Coastal Management Program, the Ocean Plan will guide state response to and participation with federal agency action regarding ocean resources.

## The Task Force

The Oregon Ocean Resources Management Task Force membership was established by the Legislature to include the many state agencies, local government, groups, and interested parties in ocean issues. The members of the Task Force are listed in the front of this Ocean Plan document. A large and diverse Technical and Scientific Advisory Committee provided advice, information and feedback. In addition, the Task Force was charged with involving the public and coordinating with affected federal agencies and adjacent states. The Legislature was concerned that the Ocean Plan be prepared in a wide open, public process.

## Ocean Plan Requirements

The Ocean Plan is required to have four major elements:

1. An analysis of state and federal laws, programs, and regulations affecting ocean resources within the planning area, including gaps, overlaps, and conflicts.

This analysis is in three parts: 1) the *Territorial Sea Management Study*, completed in 1987 for the Department of Land Conservation and Development by James Good, Oregon State University Extension/Sea Grant program and

Richard Hildreth, University of Oregon Ocean and Coastal Law Center; 2) Appendix, *Interim Report of the Ocean Resources Management Task Force*, 1988; and 3) an *Analysis of State Laws and Agency Responsibilities* (included in the Executive Summary of this Ocean Plan).

2. A study of present and future ocean uses off Oregon and an analysis of the state's management regime for these uses.

A description and analysis of uses and activities in the ocean off Oregon are included throughout the Ocean Plan. Some potential uses are listed as issues for future study in the Governance section, Territorial Sea Plan subsection of this plan.

3. Maps and other information in computer format about ocean conditions, uses, and resources to provide a basis for plan decisions.

A comprehensive computerized geographic database has been developed at the Oregon Department of Energy, Geographic Information System Service Center. The Department of Land Conservation and Development has coordinated with a variety of state, federal and academic agencies to acquire and develop this database. This Ocean Plan document contains some maps and other graphic products from the GIS. Improvements and additions to the database and computer system are continuing. The goal is to develop a dynamic, accessible information system available to all who need its information.

4. Recommendations to develop or improve state agency programs for managing ocean resources, with emphasis on oil and gas and related activities, oil spill response, marine minerals, marine water quality, air quality, environmental studies and research, and a permanent management structure and process to keep the plan up to date.

These recommendations are found throughout this Ocean Plan and form the

policy and action framework for Oregon's ocean program.

## The Impact of the Ocean Plan on State Agencies

The Legislature clearly intended the Ocean Plan to be the coordination framework for Oregon state agencies and their programs for ocean resources. Two separate provisions of the 1987 Act strongly suggest that state agencies are obligated to act in a manner consistent with the Plan.

The Oregon Attorney General's Office has provided an analysis of the impact of the Plan on state agencies. That analysis concludes that 1) state agencies may not act inconsistent with the plan but 2) agencies are not obligated "to elevate priorities identified in the plan over other statutorily or constitutionally mandated responsibilities." Thus, when state agencies take action regarding ocean resources, they must do so consistent with the plan. However, agencies are not compelled to change programs to meet the many recommended actions contained in the program.

## The Impact of the Ocean Plan on Federal Agencies

Congressional action in late October, 1990, may profoundly affect the way in which Oregon's Ocean Program guides federal activities both in the state's territorial sea and in federal ocean waters from 3 to 200 miles. The federal Coastal Zone Management Act Reauthorization Amendments of 1990 overturns a 1984 Supreme Court decision in *Secretary of the Interior v. California* in which the Supreme Court held that federal OCS oil and gas lease sales had no effect on a state's coastal zone and hence were not required to be "consistent" with policies and regulations in the state's coastal program.

The new law clarifies that all federal agency activities, whether in or outside of a state's coastal zone (including the three mile ter-

ritorial sea), are subject to the "consistency" requirements of section 307 (c)(1) of the federal Coastal Zone Management Act if they affect natural resources, land uses, or water uses in the coastal zone. "Affecting" activities mean direct immediate impacts, cumulative impacts and reasonably foreseeable indirect effects that occur later and away from the action. No federal activities are categorically excluded.

To achieve the full benefits of this expanded state authority, Oregon will need "enforceable" policies within the Oregon Coastal Management Program pertaining to protection of ocean resources. Enforceable policies include constitutional provisions, court decisions, statutes, regulations, administrative rules, acknowledged land use plans and implementing ordinances.

The Oregon Ocean Resources Management Act and this Plan establish the policy framework for enacting enforceable policies. The new federal law is a strong incentive for the state to prepare a plan for Oregon's territorial sea which provides the needed procedural clarification and regulatory detail to assure policy enforceability. With enforceable plan policies officially incorporated into Oregon's coastal management program, state agencies and local governments will have a powerful tool to hold federal agencies accountable to the standards of Oregon's ocean management program.

## Citizen Involvement

The Ocean Plan was developed with substantial citizen involvement in all phases of the planning process as required by the 1987 Act. All meetings of the Task Force were widely publicized through direct notice by mail, articles in newspapers, radio and television announcements and posters. Citizens attended all Task Force meetings. Each Task Force meeting included designated "open mike" opportunities for public comment which were well used. In addition, citizens were often able to interact directly with the Task Force during discus-

sions. Citizens attended and participated freely during three Task Force two-day workshops held in January 1988, January 1989, and February 1990.

In fall 1988, eight public workshops were held. Five were in the coastal cities of Brookings, Coos Bay, Florence, Newport, and Cannon Beach and three in the inland cities of Portland, Eugene, and Medford. A total of over 200 people attended. Several issues and concerns raised at these workshops were subsequently discussed by the Task Force and policies were developed and included in the plan.

In November 1989, workshops were held in Gold Beach, Newport and Astoria with fishermen and four general public workshops were held in Gold Beach, North Bend, Newport and Cannon Beach to discuss the first draft plan. 800 copies of the draft were distributed and over 300 people attended.

Information about the plan and other ocean issues was provided via *Oregon Ocean*, a newsletter. A mailing list was established and new names were continually added from those who attended meetings and workshops. A total of ten newsletters were prepared and mailed to over 1200 recipients. Issue papers were announced and made available upon request.

Copies of both draft plans were widely disseminated in person and by mail. 800 first draft plans were distributed in October 1989, and 1300 final draft plans were distributed in May 1990. In addition to many comments voiced at the fall 1988, November 1989, and May 1990 hearings and workshops, more than sixty letters were received commenting on the first draft ocean plan and thirty letters were received on the final draft. The Task Force made substantial revisions to the first draft plan as a result of these fall 1989 workshops. Some minor amendments were made after the May 1990 hearings.

## **Local Government Coordination**

The 1987 Act recognizes the fundamental role of Oregon's coastal local governments in regulating shoreline land uses which could affect ocean resources. The Ocean Plan is required to be compatible with acknowledged comprehensive plans of adjacent coastal counties. The Task Force was required to work with the Oregon Coastal Zone Management Association, Inc. to make sure that local governments were involved in the ocean planning process.

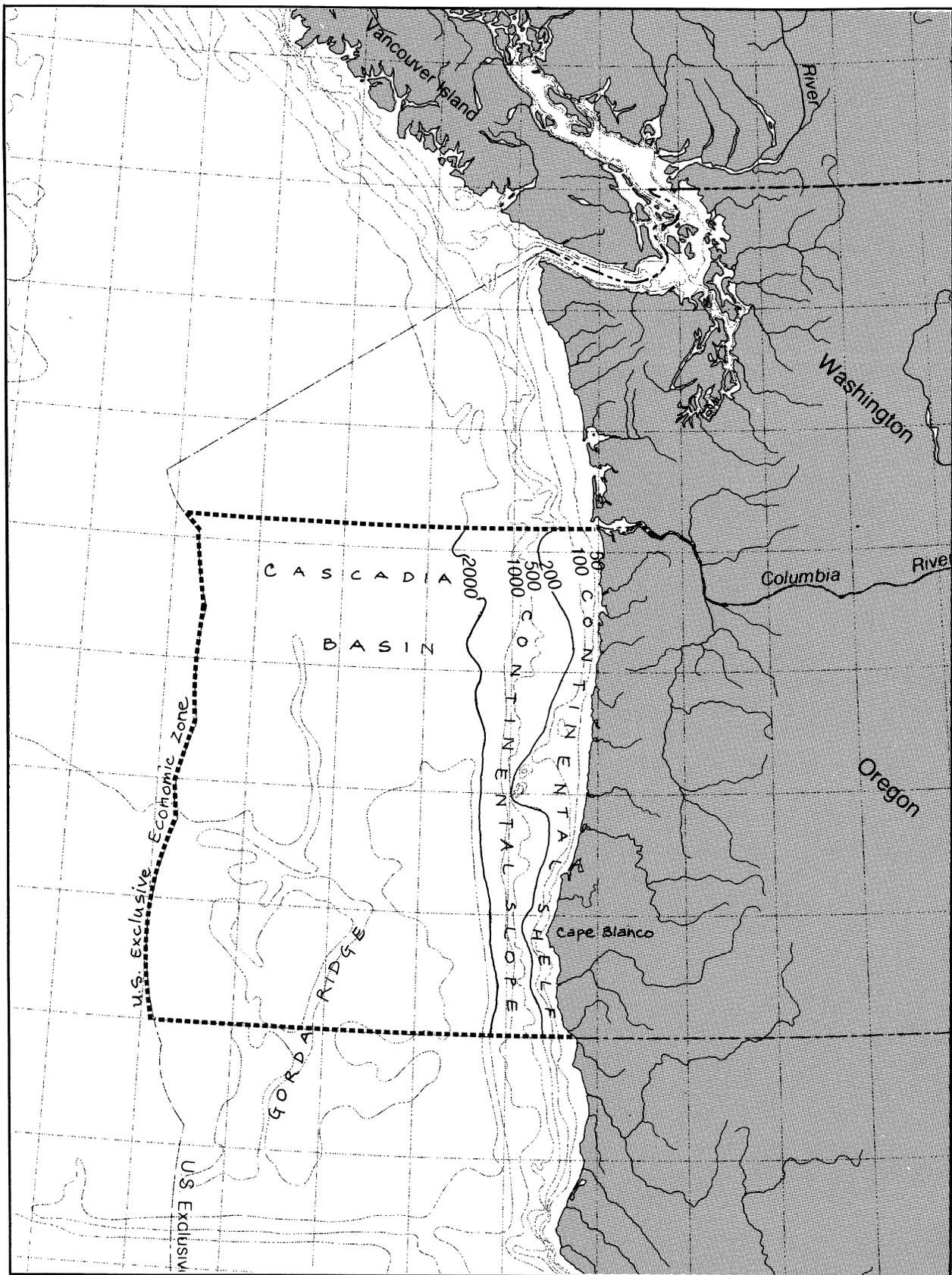
Coastal local governments were well represented during development of the Ocean Plan. A coastal county commissioner and the Director of the Oregon Coastal Zone Management Association were members of the Task Force. In addition, representatives from coastal cities, counties, and port districts provided comment and advice during preparation and review of plan elements.

The Plan reaffirms that coastal local governments have important regulatory responsibilities for land uses and activities along the ocean shoreline and can take affirmative action to protect ocean resources. In the past, most local governments have simply not regarded ocean resources as part of traditional land use considerations. The Plan contains a listing of ocean resource topics which local plans could address as well as recommendations that coastal cities and counties review their plans and ordinances and amend, as necessary, to protect ocean shoreline resources or regulate onshore development resulting from the use of ocean resources. Five other plan recommendations call for strengthening local government's participation in ongoing ocean planning and decision making.

## **Federal Agency Involvement**

The 1987 Act recognized the major role of the federal government in managing a variety of ocean resources. The Legislature called for close coordination with federal agencies during development of the Ocean Plan. Several federal agencies participated in Task Force workshops and meetings, provided information for the ocean resources GIS or commented on staff papers and draft plan elements. These agencies included:

- Department of the Interior
  - U.S. Fish and Wildlife Service/Oregon Islands and Three Arch Rocks National Wildlife Refuges
  - U.S. Fish and Wildlife Service/Ecological Services Branch
  - Minerals Management Service/Pacific OCS Region
  - Minerals Management Service/Office of Strategic and International Minerals
- Department of Commerce
  - National Oceanic and Atmospheric Administration
  - National Marine Fisheries Service/Habitat Conservation Branch
  - National Marine Fisheries Service/Resource Assessments and Conservation Branch
  - National Ocean Service/Office of Oceanography and Marine Assessments
  - National Ocean Service/Office of Ocean and Coastal Resources Management
- Environmental Protection Agency/Region 10
- Department of Defense
  - U.S. Army Corps of Engineers/Portland District



Oregon's Ocean Planning Area

## Jurisdictions at Sea

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**M**anagement of ocean resources and uses is fragmented and complex. Numerous state and federal agencies have authority or jurisdiction over resources and uses, depending on location or the kind of resource or use. The political and administrative boundaries limiting these authorities are not related to the fluid, dynamic nature of the ocean or its resources. Activities and uses under federal jurisdiction, for instance, may affect resources or uses under state jurisdiction. State programs may affect resources under federal jurisdiction.

One of the principal objectives of the Oregon Legislature was to coordinate these authorities and develop a comprehensive framework for coordinated management among all agencies. The process of developing the Ocean Plan produced more than just a plan; a variety of local, state and federal agencies began to work together to address resource management needs. This communication and coordination has set the stage for Oregon's ongoing ocean management program.

### The Oregon ocean planning area

As a first step in ocean resources planning, Oregon defined an ocean planning area from the border with Washington on the north to the California border on the south and westward

from the shoreline to the boundary of the United States Exclusive Economic Zone (EEZ) 200 miles at sea.

Three geographic regions fall within this ocean planning area:

- The coastline, including intertidal areas and nearshore rocks and islands;
- The continental margin, including the continental shelf and continental slope; and
- The deep ocean beyond the continental margin, including several features such as the Cascadia Basin, Gorda Ridge and Blanco Fracture Zone.

Coastal watersheds and estuaries were not included in the ocean planning area because these areas, although interconnected with

oceanic ecosystems, are managed through local land use and estuarine plans.

The general oceanographic characteristics of the Oregon Ocean Planning Area have been described in detail in *The Oregon Ocean Book* published by the Department of Land Conservation and Development (DLCD) in 1985. *The Oregon Estuary Plan Book*, published in 1987 by DLCD, contains a full explanation of Oregon's estuarine habitats and how they are managed.

## The Exclusive Economic Zone

In 1983, the United States asserted jurisdiction over the resources and uses of the ocean within 200 miles of its coastline, an area known as the U.S. Exclusive Economic Zone (EEZ). Coastal states have primary jurisdiction and control of the first three miles and the federal government has jurisdiction over and controls the remaining 197 miles of the EEZ.

Within the EEZ, the U.S. claims authority to control the exploration, conservation, and management of all natural resources, both living and nonliving, of the seabed, subsoil and overlying waters. The management of natural resources within the EEZ is primarily a domestic, not international, responsibility.

The 200 mile EEZ also coincides with the fishery conservation zone designated by the Magnuson Fisheries Conservation Act of 1976. Within this 200 mile-wide area, regional fisheries councils regulate foreign and some domestic fisheries (see Ocean Fisheries):

## The Federal Outer Continental Shelf

Since 1953, the U.S. Department of the Interior has administered the Outer Continental Shelf Lands Act (OCSLA) and has had jurisdiction over the seabed resources of the Outer Continental Shelf (OCS). This OCS area extends from the boundary with the state's three mile territorial sea (see below) seaward an in-

definite distance to a depth of water which permits exploitation of resources such as oil and gas. For years this area was roughly defined by a depth of 600 feet, the edge of the geographic continental shelf. However, the Department of the Interior has asserted that the seaward limit of the OCS is now coincident with the U.S. EEZ. It is in this area that the Department of the Interior has pursued oil and gas leases under the OCSLA.

## The State's Territorial Sea

The 1953 federal Submerged Lands Act established coastal states' ownership of the sea bottom within three miles of their coastlines. Within this three mile strip, called the territorial sea, coastal states have the power to manage, administer, lease, develop and use the land and natural resources of the ocean. The federal government retains considerable authority in the territorial sea in matters of navigation, interstate commerce, national defense, and international affairs. For example, within the three miles the U.S. Coast Guard has sole authority to establish vessel traffic lanes, the Environmental Protection Agency can designate ocean dumping sites, the Corps of Engineers can dispose of dredged material subject to relevant federal acts, and the military can conduct necessary defense exercises.

In 1988, a Presidential Proclamation extended the territorial sea to twelve miles for international matters, but stated that domestic laws were not to be affected by the extension. Many questions remain regarding the impact and full meaning of the Presidential Proclamation.

## Oregon County Boundaries

The boundaries of Oregon's coastal counties extend seaward three miles to the western boundary of the state. However, the Oregon ocean planning law (ORS 196) requires that planning for ocean resources and for submerged and submersible lands of the territorial

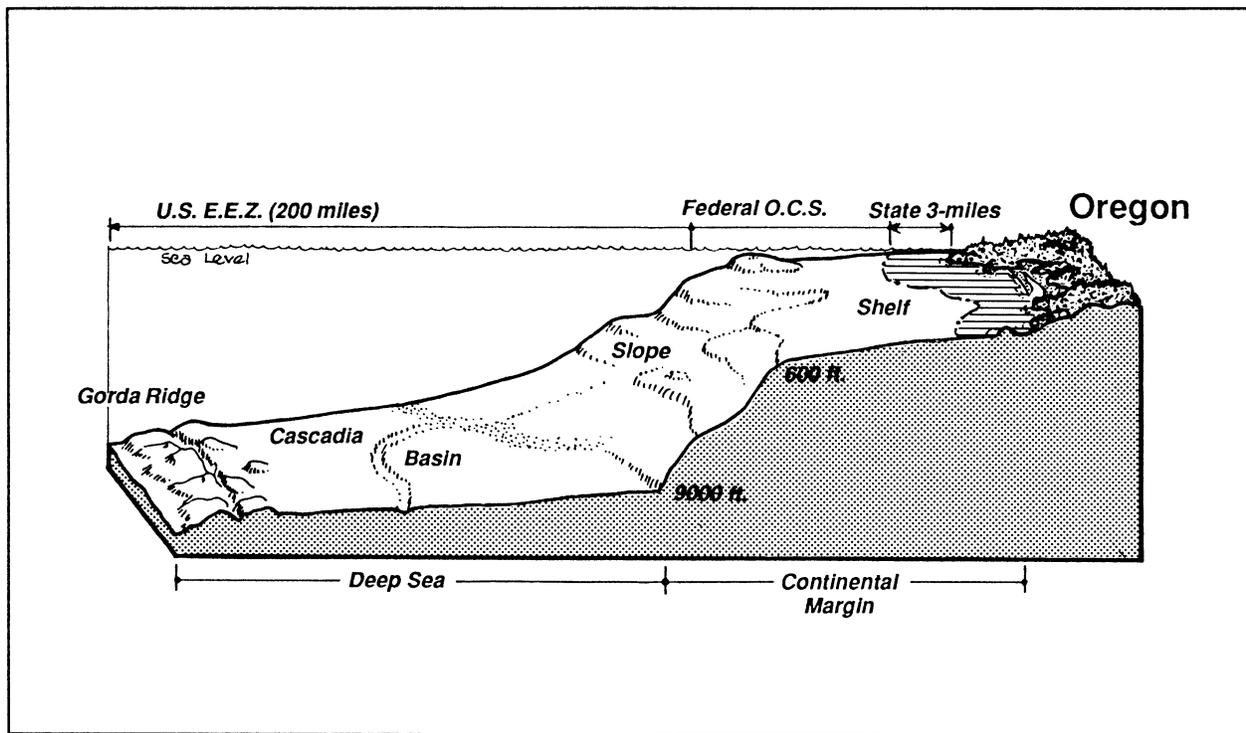
sea be carried out under the Oregon Ocean Resources Management Plan.

## Oregon Ocean Stewardship Area.

The Oregon Ocean Resources Management Plan designates an Ocean Stewardship Area as the ecologically sensible area for coordinated, comprehensive management of ocean resources of direct concern or responsibility of the State of Oregon. The Ocean Stewardship Area includes the entire continental margin from mean high water along the coast across the continental shelf and down to the bottom of the continental slope.

Oregon does not claim ownership or possession of the entire area. Designation of the area will change neither the jurisdictional boundaries of the state nor the federal legal regimes under which the resources of the U.S. Exclusive Economic Zone are managed. Rather, Oregon believes that by designating an Ocean Stewardship Area, the state is advancing the principles of ecologically sound ocean resources management.

The Oregon Ocean Stewardship Area and the accompanying principles of conservation and habitat protection are discussed more fully in the next section.



Cross-section of Oregon's offshore area (not to scale)

