



# PART THREE:

# **Rocky Shores Management Strategy**

## **D. EXISTING ROCKY SHORES MANAGEMENT**

### **1. State Regulations**

#### **a. Marine Fish and Shellfish**

***NOTE: Extensive and detailed regulations for harvesting of fish and shellfish in Oregon's marine waters are contained in the annual "Oregon Sport Fishing Regulations" of the Oregon Fish and Wildlife Commission authorized by Oregon Administrative Rules Chapter 635, Division 39. This section is a brief summary of regulations pertinent to rocky shores management and is not a complete set of regulations. Consult the complete Fish And Wildlife Commission fishing regulations for details.***

In summary, marine fishery regulations apply to the Pacific Ocean, coastal bays, and beaches. No license is required to take smelt, shellfish, or other marine invertebrates. An angling (fishing) license is required to take and land marine fish, including halibut, lingcod, rockfish, flounder, surfperch, greenling, cabezon, sole, and others and, in addition, special tags are required by ODFW for some species.

Shellfish are marine animals that may be harvested without a license but there are daily limits on the number taken and on the kind of equipment or harvest method used. Shellfish are defined in ORS 506.011 as abalone, clams, crabs (Dungeness, Red Rock), mussels, oysters, piddocks, scallops, and edible shrimp.

#### **b. Invertebrates**

Although shellfish are, in fact, invertebrates (they have no backbone), regulations distinguish between the more commonly harvested "shellfish," above, and "other marine invertebrates." ODFW regulations state:

*"There is no limit on the number of sand crabs, kelp worms, mud and ghost shrimp or Turban snails that may be taken. The daily catch limit is ten intertidal animals in the aggregate of all other intertidal animals (starfish, urchins, snails, and similar animals.)"*

Several rocky-shore areas are closed to taking of marine invertebrates. These areas are described in Subsection F.3.

## Areas Closed to Taking of Marine Invertebrates, Clams\*, Mussels\*\*

all sand beaches, rocks, and tidepools within:

- X Marine Gardens at Otter Rock
- X Marine Gardens at Cape Perpetua
- X Whale Cove (closed to taking of all fish, shellfish, and marine invertebrates)
- X Yaquina Head Natural Area
- X Marine Gardens at Haystack Rock

\* *Razor clams may be taken at Cape Perpetua*

\*\* *Single mussels may be taken for bait at all sites*

## Areas Where Permits Are Required to Take "Other Marine Invertebrates"

all sand beaches, rocks, and tidepools within:

- X Shell Cove (Depoe Bay)
- X Boiler Bay
- X Neptune State Park (Strawberry Hill) Sunset Bay to Cape Arago Harris Beach

### **c. Commercial Shellfish Harvest**

A permit from the Oregon Department of Fish and Wildlife is required for commercial harvest of shellfish including mussels, clams, and crabs. The permit specifies conditions on the species, area, and method of harvest. A logbook showing date, pounds, dealer, area, and other data must be kept and submitted to ODFW.

All areas of the coast are open to commercial harvest except the following (the following list does not include closed areas of estuaries or rivers):

#### **Areas Closed For ALL Commercial Harvesting**

- X Marine Gardens at Haystack Rock
- X Boiler Bay
- X Shell Cove
- X Whale Cove
- X Marine Gardens at Otter Rock
- X Marine Gardens at Yaquina Head
- X Marine Gardens at Cape Perpetua
- X Neptune State Park
- X Sunset Bay-Cape Arago
- X Harris Beach

#### **Areas Closed to Commercial Mussel Harvest**

- X Arch Cape
- X All offshore rocks
- X All state, federal and county parks or waysides are closed on all weekends and holidays.  
*Commercial harvesters are required to leave one layer of mussels on the rocks.*

#### **d. Scientific/Educational Collecting**

A scientific collecting permit may be obtained from the Oregon Department of Fish and Wildlife to collect more than the regulations otherwise allow and to collect in "permit-only" rocky-shore areas for scientific or educational purposes. Scientific collecting permits specify the area where collecting is authorized and may not be used in other areas. A collection report is required.

#### **e. Marine Plants**

There are no specific regulations or permits required for the harvest of marine plants (except for commercial harvest or leasing for bull kelp, regulated under ORS 274, administered by the Division of State Lands). Individuals may harvest up to 2000 pounds of kelp per year for human consumption without a lease from the Division (ORS 274.895).

The removal of "marine growth" from the state recreation area (otherwise known as the "ocean shore," the area between extreme low tide and the line of vegetation) is prohibited by law except in compliance with regulations of the Parks and Recreation Department. The State Parks and Recreation Department has authority to adopt such rules "to protect the areas from any use, activity, or practice inimicable to the conservation natural resources or public recreation." To date, OPRD has not adopted rules governing the removal of "marine growth."

#### **f. Boating/Closure Areas**

The State Marine Board has authority to adopt regulations for boating activity in state waters. The Marine Board has adopted regulations (OAR 250-20-309) to establish a seasonal boating closure around Three Arch Rocks to protect wildlife.

#### **g. Access**

Although the ocean shore is, by law, a public recreation area, the State Parks and Recreation Department (OPRD) has authority to regulate uses and activities as well as "improvements" on the ocean shore (between extreme low tide and the line of vegetation). Such regulation of uses or activities may result in certain uses being prohibited from certain ocean shore areas. In addition, the OPRD may limit or close access to the beach or rocky shore area from an adjacent state park area in response to safety or habitat protection considerations. The OPRD also has authority to regulate beach access structures, like seawalls or stairways, in the ocean shore area. None of the authority of the OPRD to regulate or control the use of Oregon's ocean shore limits or degrades the public's overriding rights to the ocean shore area.

## **2. Federal Laws and Regulations**

*NOTE: The following are brief summary descriptions of some federal statutes as they may apply to managing Oregon's rocky shore areas. The United States Code (U.S.C.) should be consulted for a complete text of these statutes and the Code of Federal Regulations (CFR) should be consulted for the complete regulations adopted by the agency.*

### **a. Threatened and Endangered Species**

#### **Endangered Species Act (16 USC 1531-1543)**

A number of bird and mammals species that use Oregon's rocky shore areas, either as residents or when migrating, are protected as threatened or endangered species under federal law. These species include Aleutian Canada goose, brown pelican, bald eagle, peregrine falcon, marbled murrelet, Steller sea lion, and gray whale.

Federal regulations prohibit the unauthorized "taking" of any species listed by federal regulation as "threatened" or "endangered." The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." These federal regulations determine the protection standards for these animals or plants even when they occur in state waters. Federal regulations authorize the designation of "critical habitat" for threatened or endangered species that can have consequences for human activities within or adjacent to such designated areas.

### **b. National Wildlife Refuge System/National Wilderness System**

#### **National Wildlife Refuge System Administration Act**

**(16 USC 668dd-668ee) and Oregon Islands National Wildlife Refuge;**

#### **Wilderness Act (16 USC 1131-1136)**

Almost all the rocks and islands along the Oregon coast are in the Oregon Islands National Wildlife Refuge or Three Arch Rocks National Wildlife Refuge, which are administered by the U.S. Fish and Wildlife Service. There are extensive regulations for managing these rocks and islands under many different laws. The chief ones of interest for rocky shores relate to prohibiting trespass (no climbing or landing on) or harassing wildlife, whether intentional or unintentional. In addition, most rocks under National Wildlife Refuge System jurisdiction are also in the Oregon Islands Wilderness designated by Congress.

### **c. Migratory Species**

#### **Migratory Bird Conservation Act of 1929 (16 USC 715-715r)**

#### **and Migratory Bird Treaty Act of 1918 (16 USC 703-712)**

Oregon's rocky shores are habitat for many migratory species that are covered under federal law, including the Migratory Bird Conservation Act of 1929 and the Migratory Bird Treaty Act of 1918. Thus, these habitat areas are of interest not just to the State of Oregon or the United States but to other nations, too. Federal regulations protecting migratory species are an important part

of Oregon's rocky shore management.

#### **d. Marine Mammals**

##### **Marine Mammal Protection Act (16 USC 1361-1407)**

Several species of marine mammals make Oregon's rocky shores their home for all or part of the year. All these mammals are protected under federal law, the Marine Mammal Protection Act. Under this law it is unlawful to "take" a marine mammal; this means that it is unlawful to harass, hunt, capture, or kill, or attempt to do these things to any marine mammal.

### **3. Special Use/Management Areas**

Several different kinds of special-management areas have been designated over the years in response to various needs or opportunities. These special-management or special-use areas allow agencies to tailor management and regulations to address particular uses or resources of an individual area. Some of these areas, such as the Intertidal Permit-Only Areas, will be blended in to the rocky-shore management areas described in previous sections of this plan. Other areas, such as State Parks, and National Wildlife Refuges will remain distinct but will be central components of the rocky-shore strategy.

#### **a. Intertidal Marine Gardens**

Four Marine Gardens have been designated by the Oregon Fish and Wildlife Commission through regulations administered by the Department of Fish and Wildlife. These Marine Gardens are closed to the taking of marine invertebrates, clams (except razor clams at Cape Perpetua), and mussels (except single mussels for bait) and have little or no other site management activities.

X **Otter Rock:** the sand beaches, rocks, and tide pools between higher-high water and lower-low water lying between a line projected due west from the highest point of Cape Foulweather on the north and a line projected due west from the Devil's Punchbowl on the south;

X **Cape Perpetua:** the sand beaches, rocks, and tide pools between higher-high water and lower-low water from the northerly boundary of Neptune State Park to the north side of Devil's Churn;

X **Haystack Rock, Cannon Beach:** including Haystack Rock and an area within a 300-yard radius of the base of the rock.

X **Yaquina Head Natural Area:** all rocky areas and tide pools situated between higher high water and lower low water lying between the sand beach on the south to the sand beach on the north of Yaquina Head.

#### **b. Intertidal Permit-only Areas**

There are five areas where permits from the Oregon Department of Fish and Wildlife are required to take intertidal animals:

X **Shell Cove** (Depoe Bay): all sand beaches, rocks, and tide pools between higher-high water and lower-low water lying between a line projected due west from Shell Road in the south half of Section 8, Township 9 south, Range 11 west, on the north; and a line in the southeast quarter of Section 7 on a line projecting due west along the southern boundary of Section 7 in Township 9 south, Range 11 west;

X **Boiler Bay**: all sand beaches, rocks, and tide pools between higher-high water and lower-low water lying between a line projected due west from the mouth of Fogarty Creek, Lincoln County, on the north and a line projected due west from Bench Marker 53 at Boiler Bay State Park;

X **Neptune State Park**: all sand beaches, rocks, and tide pools between higher-high water and lower-low water between the park's southerly and northerly boundaries;

X **Sunset Bay - Cape Arago**: all sand beaches, rocks, and tide pools between higher-high water and lower-low water lying between a line projected due west from the Cape Arago light and a point 3/4 of a mile south of Cape Arago State Park;

X **Harris Beach**: all sand beaches, rocks, and tide pools between higher-high water and lower-low water and all intertidal areas lying between a point 1/2 mile north of the Harris Beach State Park on the north and the mouth of the Chetco River on the south.

### **c. Research Areas**

There are numerous rocky shore areas where research is or has been conducted. Some of these are long-term study areas while others are the site for seasonal or special projects. The Oregon Department of Fish and Wildlife has research projects at several locations including Whale Cove, Pirate Cove, and Nellie's Cove.

Researchers at Oregon State University have historically used sites on the central coast such as Boiler Bay, Strawberry Hill, and Yaquina Head as field laboratories for study of ecosystem processes in intertidal areas. Researchers from the University of Oregon, especially the University's Institute for Marine Biology, have historically used south coast sites at Cape Arago, Shore Acres, Cape Blanco, and Hooskenagen Creek near Cape Ferrello. Other research has been conducted at Haystack Rock, Otter Crest, and other areas where scientific collecting is permitted.

### **d. State Parks**

Many of Oregon's major, as well as smaller, rocky shore areas are adjacent to or within the boundaries of Oregon State Parks. Thus, the management of these parks can have a significant effect on habitat and resources of the rocky shores. Within a park, access can be controlled, educational or interpretive programs can be implemented, facilities can be installed, and other

measures taken to carry out the rocky shores strategy of this plan. In addition, these parks can serve as habitat buffers and protected areas by leaving some park areas undeveloped and inaccessible to the public.

#### **e. Cape Meares**

The Oregon Parks and Recreation Department and the U.S. Fish and Wildlife Service have signed an interagency cooperative agreement to manage state park facilities in conjunction with the Cape Meares National Wildlife Refuge. The sheer basalt cliffs and old-growth Sitka spruce forest of the cape are especially important habitat for several bird species.

#### **f. Cascade Head**

Cascade Head and the Salmon River estuary are owned and managed through joint efforts of The Nature Conservancy and the U.S. Forest Service as a research natural area. In addition, Cascade Head is listed as an International Biosphere Reserve.

#### **g. Whale Cove**

The Oregon Department of Fish and Wildlife has for a number of years closed Whale Cove south of Depoe Bay to all harvest of fish and shellfish to maintain a baseline research area. In addition, a long-term study of the success and growth of planted red abalone is being conducted in Whale Cove.

#### **h. Yaquina Head**

The upland area of Yaquina Head is administered by the U.S. Bureau of Land Management as an Outstanding Natural Area. The rocks associated with the head are managed as National Wildlife Refuge sites by the U.S. Fish and Wildlife Service. The State of Oregon has jurisdiction over the dry sand beach, rocky intertidal areas, and associated subtidal rocks and reefs. The intertidal area is designated a Marine Garden by the Oregon Fish and Wildlife Commission.

#### **i. North Cove/Shell Island at Cape Arago**

The north cove at Cape Arago is an especially rich and diverse habitat area for a wide variety of intertidal plant and animal species, seabirds and marine mammals. The entire cove is somewhat sheltered from the open ocean by Simpson Reef, a linear rock feature about one-half mile offshore. Near the center of the cove, Shell Island, a large rock with a sand beach on its landward side, and other large rocks provide ideal haulout and pupping sites for seals, sea lions, and elephant seals (the only such site for elephant seals in Oregon). However, these rocks are accessible by foot at low tide, especially the very low tides of late spring and early summer.

The park upland is owned and managed by the Oregon Parks and Recreation Department, the rocks and islands in and adjacent to north cove are part of the National Wildlife Refuge System managed by the U.S. Fish and Wildlife Service. These two agencies have an agreement to close

trail access to North Cove between March 1 to June 15 each year to protect seals and sea lions that bear and raise their pups on the rocks, reefs, and beach area.

#### **j. Three Arch Rocks National Wildlife Refuge/state buffer area**

The rocks of Three Arch Rocks National Wildlife Refuge offshore Oceanside in Tillamook County are very valuable and heavily used habitat for colonial nesting seabirds and for marine mammals. The Ocean Policy Advisory Council has adopted a 500-foot seasonal closure area for the waters around these rocks to buffer breeding seabirds and mammals from human disturbance caused by boats. The State Marine Board has enacted boating regulations to close the 500-foot wide area between May 1 and September 1 of each year.

#### **k. Orford Reef Urchin Seasonal Closure Area**

Orford Reef, approximately three miles southwest of Cape Blanco, contains a number of rocks that are critical habitat for the Steller sea lion, a species listed as "threatened" under federal law. The submerged reef areas within Orford Reef are the target of a red sea urchin dive fishery. In the late 1980s, observations suggested that Steller sea lion use of some rocks in the reef was being adversely affected by the presence of urchin dive activity. In 1990, the ODFW and the urchin industry instituted a 1,000 foot-wide urchin fishery closure area around Long Brown Rock and Seal Rock between May 1 and August 31. In 1993, the National Marine Fisheries Service designated a 3000-foot wide critical habitat area around these rocks but has not adopted any associated restrictions. The sea urchin industry provided additional protection by voluntarily instituting a moratorium on all harvest in and around Orford Reef during the summer months.

#### **l. Rogue Reef Fishery Closure Area**

Rogue Reef is located about two miles off the mouth of the Rogue River and the City of Gold Beach. Pyramid Rock in Rogue Reef is a critical habitat site for Steller sea lions and is the largest pupping site south of Alaska. This reef is also receiving increased fishery use, principally sport rock-fishing. As at Orford Reef, impact concerns from the urchin dive fishery led to a seasonal closure to that fishery to protect Steller sea lion reproduction. Beginning in 1994, a 1000-foot area around Pyramid Rock is closed to all fishing activity during the period May 1 to August 31. In addition, the National Marine Fisheries Service has designated an area 3000 feet wide around these important sites as critical habitat but has not adopted any associated restrictions.

### **4. Regulatory Improvements**

#### **a. Conformance with Rocky Shores Strategy**

The ODFW regulations should be reviewed and updated as necessary to conform to the area management designations of the Rocky Shores Strategy.

The bag limits for marine invertebrates, including the "no limit" rule on taking sand crabs or Turban snails, should be reviewed and revised as necessary to conform to the Rocky Shores Strategy.

## **b. Permits**

The ODFW should review its permit system to determine whether changes are needed such as:

- X criteria and conditions for scientific and commercial harvest permits;
- X fees for certain permits;
- X reporting requirements;
- X seasons for certain activities.

The Division of State Lands should review and clarify its criteria for requiring and approving a "right of entry" permit for submerged and submersible lands.

## **c. Legislative Changes**

The Oregon Legislature should be asked to

- X provide an appropriate state agency with authority to regulate the harvest of marine algae (seaweeds) in intertidal and subtidal areas in conformance with this Territorial Sea Plan.

*NOTE: ORS 274.895 requires a lease from the Division of State Lands for removing kelp or other marine algae from submerged lands (but not from submersible), except that 2000 pounds per person may be harvested for "human use" without a permit.*

*NOTE: ORS 390.725 authorizes the State Parks and Recreation Department to regulate the taking of "marine growth or other natural product" from the state recreation area, which extends to extreme low water and includes intertidal areas.*