



**CONFEDERATED TRIBES OF  
COOS, LOWER UMPQUA AND SIUSLAW INDIANS  
TRIBAL GOVERNMENT**

1245 Fulton Avenue - Coos Bay, OR 97420

Telephone: (541)888-9577 Toll Free 1-888-280-0726 Fax: (541)888-2853

AGENDA ITEM 4  
MARCH 31-APRIL 1, 2022-LCDC MEETING  
ATTACHMENT D

March 5, 2020

Ocean Policy Advisory Council  
Rocky Habitat Working Group  
cc: Jim Rue, DLCD  
Patty Snow, DLCD

**SENT VIA EMAIL ([michael.Moses@state.or.us](mailto:michael.Moses@state.or.us); [TSP.Comments@state.or.us](mailto:TSP.Comments@state.or.us))**

**RE: Comments on Oregon's Territorial Sea Plan Rocky Habitat Management Strategy**

Dear Chair Plybon and members of the Rocky Habitat Working Group,

Please accept these comments submitted on Oregon's Territorial Sea Plan (TSP) Rocky Habitat Management Strategy on behalf of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians ("CTCLUSI" or "Tribe").

**Background**

The Tribe has a strong and deep connection to coastal resources and landscape. Our area of interest is rooted to 1.6 million acres of the Oregon coast landscape and extends westward into the ocean 12 miles beyond the continental shelf. Specifically, the Tribe's Ancestral Territory is defined in the north at Tenmile Creek (Lane County) in the north and in the south to Fivemile Point halfway between the mouths of Whiskey Run Creek and Cut Creek (Coos County) with the Coast Range defining most of the eastern boundary. The area includes the extensive estuaries of the Siuslaw, Umpqua, and Coos Rivers, numerous smaller waterways, as well as rugged cliffs and open beaches, bordered by shifting sand dunes and steep, heavily vegetated mountainsides. The CTCLUSI are the original inhabitants of this area. Our area of interest extends beyond our Ancestral Territory to Cape Perpetua and Yachats in the North, spans South into Curry County to include parts of the Sixes River as well as West to trade and gathering areas such as Camas Valley because of our history and modern connections to these places.

In 1855, we negotiated a treaty in good faith with the United States government. The United States government neither ratified nor honored that treaty. Instead, we were stripped of our homelands and marched at gunpoint from one prison camp to another. The Yachats was a large holding area for our relatives with the Great Coast Reservation capturing Northern portion of our Ancestral Territory. The Tribes held in the southern reservation boundary faced hard choices when after nineteen years of abuse, starvation, death, and another federal promise was set to be

broken and reservation boundaries reduced. We refused to be moved again. We returned to our homelands only to find that during the years of being held captive, our villages had become town sites and others had claimed our fishing camps. Despite our devastation, we endured. The land, view sheds and ancestral connection comforted us.

In 1917, we officially banded together as the CTCLUSI and established a formal elected government that reflected the federal and state structures in an over thirty (30) year for the rightful compensation and treaty authorities for our stolen lands. Despite our continued existence and persistence in our Ancestral Territory, the U.S. government terminated our federal recognition in 1954. We fought this decision and refused to accept the termination of our identity. In 1984, after over three decades of significant effort, our federal recognition was restored. Our CTCLUSI constitution<sup>1</sup> is deeply rooted in our role in perpetuating tribal identity and protecting the resources that that identity depends on. Today, we continue to maintain our cultural identity and promote our sovereignty despite never receiving compensation or our treaty rights on our lands.

Our Tribe is spiritually and culturally invested in the Ancestral Territory. We seek to perpetuate our identity and connection by protecting, preserving, and enhancing the resources and landscape that continues to sustain it such as water “Water is Life.” Harvesting, gathering, canoeing, and fishing are still mainstays for tribal members. Traditional practices and beliefs continue to be associated with many of the vast resources along the coast. Many of our values, meanings, and identities are closely linked with features of this landscape and our interaction with the landscape; fish, clams, crab, seaweed, kelp, orca, seal and sea lion, seabirds, rock features, cultural sites, as well as shells. These resources also provide cultural connection through language, storytelling, harvesting, art, and ceremony.

## **Comments on the Rocky Habitat Strategy**

### **1. Consultation**

Consultation must be defined so as not to be limited to notification. Our Tribal Code sets forth our position with respect to consultation with federal agencies; however, our expectation is that the state consults with the Tribe in a similar manner for the mutual benefit of our cultural and natural resources in Oregon:

Consultation is the formal process of cooperation, negotiation, and mutual decision making between two sovereigns... Meaningful consultation requires that tribes and federal agencies understand their respective roles in the decision-making process. Tribes and federal agencies must understand the legal underpinnings of the government-to-government relationship and the obligations of the federal government under the Trust doctrine.... agencies will benefit from some understanding of the Tribes’ unique culture, perspective, governmental infrastructure, and resources.<sup>2</sup>

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<sup>1</sup> <https://ctclusi.org/assets/5873c3f6c9e22cf277000001.pdf>

<sup>2</sup> <https://ctclusi.org/assets/57f698a9c9e22c806e00000f.pdf>

While the Tribe asserts consultation rights and responsibilities, this type of engagement is limited by Tribal capacity. For example, staff review of the Rocky Habitat Strategy is currently strained by large proposed development or management projects in our area of interest (examples include but are not limited to JCEP-PCGP, Coos Bay Channel modification, Elliott State Forest). We ask that this plan sets forth strategies that include more robust Tribal engagement at all levels:

1. All four coastal tribes referenced in the Strategy should have a seat on the Ocean Policy Advisory Council (“OPAC”) and should be identified in the strategy;
2. Any working groups shall invite and encourage tribal staff participation;
3. Oregon’s Legislative Commission on Indian Services shall fill any vacant tribal seats on OPAC. (This will ensure that active recruitment takes place);
4. Tribes shall be treated as sovereigns and not members of the public with respect to any TSP amendments; and
5. Cultural practices spiritual connections, and beliefs must be valued components of plans or strategies<sup>3</sup>

We agree with the strategy in that “[a] collaborative, coordinated effort, based on a commitment to cooperate, increases the likelihood of success and decreases the need to add laws and authorities for any individual management strategy.” However, we are unsure how the strategy intends to address this commitment without changes in structure to OPAC, active engagement of Tribes at various levels of memorandums of understanding.

## **2. Site designations**

While there are provisions for revising site designations there aren’t mechanisms to modify or add new designation definitions. The current proposed designations limit ways tribes can designate place to only Marine Garden (Marine Education Area), Marine Research Area or Marine Conservation Area. Tribes in Oregon have not contributed to the decline of these habitats or the resources that depend on them. In fact, traditional practices promote ecological health, sustainable use of resources and restrict use when appropriate. Therefore, the strategy should allow tribes to work in a more flexible way with the state to designate places outside of the current allowable designations or adopt a new designation that reflects traditional use and habitat protection, it should not be lumped in with other designations.

We have recently undertaken significant cultural resource protection projects such as the Coos Bay Traditional Cultural Property, *Q’alya Ta Kukwis Shichdii Me*.<sup>4</sup> This designation, while not an official listing on the National Register of Historic Places is state recognized and federally recognized through the National Historic Preservation Act processes. The designation is an important step to protecting resources that are important to sustaining our cultural identity and connection to place. The TSP should consider how designations outside of the strategy sync up with the objectives of the Strategy or if they conflict with them. For instance, how do restrictions of “take” impact cultural gathering which contributes to the significance of TCPs or Tribal cultural designations.

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<sup>3</sup> 1-8-4 (e) Ensure the protection of tribal resources, culture, religion, and economy. *See* <https://ctclusi.org/assets/57f698a9c9e22c806e00000f.pdf>.

<sup>4</sup> <https://ctclusi.org/tcp>.

### **3. Cultural significance**

While the cultural significance of Rocky Habitats recognizes tribal connections to these places it may diminish that the value of these resources to tribes as it does not specifically define what attributes Oregonians and out-of-state visitors assign to these locations to make these areas culturally significant. To the Tribe, culturally significant means defining of our cultural practices, honoring our history and promoting/protecting lifeways. Threats to resources or places connected to cultural identity, as well as access to those resources, pose significant risk to cultural practice. While the Tribe can appreciate that these places are significant to all those who use or protect them this section should be careful to be appropriately inclusive.

Tribes may also, at times outside of this or future processes, designate significance through traditional cultural property or landscape designation. These designations can be internal to the Tribe or external through various federal processes including National Historic Preservation Act or National Register of Historic Places. The strategy should identify how these cultural designations will fold into site-specific designations.

Additionally, for coastal tribes there is cultural value and utility associated with aquatic vegetation. We understand that the plan does not change current regulations in place; however, we request that the strategy recognize these values so that if changes in regulation or intergovernmental negotiations permit these types of activities then only technical amendments need to be made to the TSP. Kelp, seaweed, and eelgrass are all very important to traditional practices of tribes. This is true of other resources as well.

Lastly, it may be helpful to include tribal history to the setting context instead of limiting it to within the cultural significance section. A helpful reference may be a document developed Oregon's Department of Education in consultation with the nine federally recognized tribes in Oregon. This document sets forth Essential Understandings to include in statewide school curriculum that provide context for tribal experience and perspectives here in Oregon. Including this context will also provide support for inclusion of tribal perspectives in education and public awareness efforts of the Strategy.

### **4. Education and Public Awareness**

The TSP's Rocky Habitat Strategy should incorporate tribal history and perspectives in Education and Public Awareness efforts. Tribes in Oregon were the first stewards of these lands and still maintain practices that benefit culturally significant species. Tribal practices fold in beliefs that assist in management of their resources. The updated strategy should work to include tribal practices, beliefs, stories and management strategies associated with Rocky Habitat's for the benefit of further protecting them.

Again, the State has already taken robust steps through legislation to require tribal experiences be part of the statewide curriculum. We see value in reflect these histories also in our landscapes through this and other strategies. It is not clear how the TSP will specifically manage the messaging for promoting protection of Rocky Habitats, but this work should be inclusive of

tribes. Additionally, other Diversity, Equity, and Inclusion efforts should be undertaken so that the protection of these habitats reflects all those who enjoy them.

## **5. Tribal Authorities**

Our Tribal history is not unlike other tribal histories in Oregon. The U.S. government never ratified our treaty thus, rightful compensation and treaty authorities were never received for our lands—they were stolen. As was our sovereignty when we were terminated. And although our sovereignty has been recognized it is limited in certain respects by broken promises of the past or current government authorities or priorities.

You will find similar histories with other coastal tribes in the state. In the context of the Territorial Sea Plan, our Tribal government structure was barely ten years old when the TSP was adopted. The Strategy and the Tribe have in common our opportunity to amend this strategy in a way that is meaningful for Oregon and the sovereign nations that live here to steward the ocean resources and areas more effectively. We have the opportunity to seek to protect these resources more effectively and holistically.

Additionally, there may be federally or state protected cultural resources or traditional cultural properties present in these areas and the strategy must consider how it will consider these resources within a designated area. It is also important to note that designations may negatively impact traditional practice or beliefs tied to these locations. Designated areas in our Ancestral Territory that exclude tribal harvest of first foods or shells are not ideal preserving traditional practices and lifeways of tribes and in this way threatens cultural identity.

Federal laws and regulations protecting cultural resources or cultural assigned values should be included or considered in some way in the strategy (p.23) if the overarching goal is to provide holistic management of these resources and habitats.

## **6. Baldich, Gregory Point**

Gregory Point is designated in the strategy (1994 and 2019) as a “Research Reserve.” This designation does not allow for invertebrate/algae harvest except by scientific permit. This designation does not consider adjacent Tribal ownership and cultural practices. While the TSP only concerns itself with the Rocky Habitat, there are other important activities and management happening just above this site that tie directly to the Rocky Habitat.

The Cape Aargo Lighthouse Property, also called Gregory Point and traditionally called Baldich, is situated immediately North of Sunset Beach in Coos County. The land was returned to the Tribe by the U.S. Coast Guard in the last several years, honoring our long history in this place. It is a ceremonial location, gathering location, and traditional practice site significant to our Tribe. The Tribe returns salmon remains here to the salmon people during annual ceremonies and Tribal Environmental program staff observe rocky habitat conditions in this area and species as well as report bird predation to the U.S. Fish and Wildlife Service when observed.

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Culturally significant species here include, abalone, sea urchins, seaweed (e.g. *Porphyra*) as well as shell deposits nearby (list not all inclusive). Additionally, sensitive cultural resources in the area may become features of the Rocky Habitat here and require cultural management.

We would appreciate prior to designation or re-designation of sites within the Ancestral Territory that the TSP consider language that is inclusive or flexible to cultural significance including traditional use and protection of cultural resources. These sites currently include: Cape Perpetua, Strawberry Hill, Bob Creek to Heceta Head, Gregory Point, Shell Island/Simpson Reef, and Cape Aargo.

### **Conclusion**

Tribal goals and objectives are often strongly aligned with holistic management. Tribes also have active and engaged natural and cultural programming that supports protection and sustainability of resources important to supporting cultural identity. Tribes have limited time and funding to participate in public process or through review of plans or designations that may impact traditional practices. We request that the Rocky Habitat Working Group recommend more tribal involvement at all levels so to work with the capacity and limits of the tribes. We recommend the Strategy develop an alternative designation pathway for sites that are culturally significant to tribes. The strategy will benefit from allowing greater opportunity to designate areas specific to tribal values and utility.

Tribal governments have programs and carry out activities in the field such as monitoring, habitat assessment, restoration, education, and outreach. Tribes also incorporate "Traditional Ecological Knowledge" into environmental science, policy, and decision making. In this way, tribes can support the Strategy objectives without additional burden to the tribes.

It is unclear how the plan will facilitate cooperation and coordination among all governments to ensure that marine resources and habitats are holistically managed. We propose the state, OPAC, and any working groups identify existing opportunities to engage tribes as well as new opportunities such as additional representation on councils and working groups.

Consultation is the gold standard for informing and coordinating with tribal governments; however, consultation letters do little to engage tribal governments in processes so these standard procedures must be coupled with active outreach as well as embedded opportunities to participate in processes that effect tribal resources.

If you have any questions about these comments, please feel free to contact our Culture and Natural Resource Director, Roselynn Lwenya, at 541-435-7151 or [rlwenya@ctclusi.org](mailto:rlwenya@ctclusi.org).

Sincerely,



Alexis Barry  
Chief Executive Officer