

Oregon Territorial Sea Plan

Adopted 1994



PART ONE:

Ocean Management Framework

F. PLAN IMPLEMENTATION

1. How The Plan Works

a. A Three-Part Plan

This initial Territorial Sea Plan has developed with three parts. Part One, Management Framework, provides a framework for describing, linking, and understanding the relationships among all relevant state and federal laws, state programs, statewide planning goals, and federal agency programs. This plan will not replace those elements but will coordinate and supplement them through specific plan provisions.

Part Two, Making Resource Use Decisions, establishes mandatory procedures and standards for carrying out Goal 19, Ocean Resources. These procedures will provide agencies and the public with requirements for receiving and reviewing proposals for activities in the territorial sea that require agency approvals. These procedures anticipate that there will be proposals for activities that are not, and perhaps cannot be, directly addressed or anticipated by this plan.

Part Three, A Rocky Shores Management Strategy, is the application of planning to specific locations and resources. It provides a planning framework for agencies to manage rocky shore sites, uses, and resources. The strategy includes goals, policies, and objectives, and applies an ecosystem-management approach to actual rocky shore locales on the Oregon coast.

Other sections on additional topics will be added over time as the Council continues its work.

b. Mandatory or Discretionary Provisions of the Plan

The Oregon Legislature clearly intended that the Territorial Sea Plan would have effect and directed that once the LCDC adopts the plan, state agencies must act consistently with it.

Consequently, the plan was written to include sections that are explicitly mandatory and sections that are recommendations only. The provisions of the plan that are mandatory include:

1.) all of Part Two: Making Resource Use Decisions; and

- 2.) specific sections within Part Three: Rocky Shores Management Strategy:
 - B.1. Rocky Shores Policy Framework: Goal, Objectives, Policies;
 - C.1. Mandatory Policies for Site Management;
 - C.2. Mandatory Policies for Amending the Rocky Shores Strategy;
 - F.2. Management Categories
 - G.1.-39. Site Designations & Management Prescriptions

All other plan provisions are recommendations and therefore discretionary. The recommendations are intended to provide planning guidance and describe preferred, but not required, courses of action.

c. Carrying Out The Mandatory and Recommended Provisions of the Plan

The mandatory provisions of the Territorial Sea Plan apply to a variety of agency actions. When agencies do any of the following related ocean resources, they must be consistent with the mandatory provisions of the plan: make program decisions, make or amend rules affecting ocean resources, approve resource-use permits and leases, manage property owned or controlled by agencies, and manage ocean resources.

State agencies may choose to incorporate the plan by reference in their state agency coordination programs. Then, upon a finding by LCDC that an agency has amended its rules, procedures, and standards to conform with the Territorial Sea Plan, the state agency will be deemed to have satisfied the requirements of state agency planning and coordination required by ORS 197.180 for ocean planning. If a state agency does not incorporate the Territorial Sea Plan in its coordination program, the agency will be subject to the state agency coordination requirements of ORS chapters 196 and 197 for state agency programs, procedures, and standards that in any way affect ocean resources. This second alternative means, in essence, that the agency must demonstrate compliance with this plan for each action it takes with respect to ocean resources.

For those plan provisions that are discretionary or that anticipate more detailed or site-specific planning and implementation, agencies are expected to refer to the plan and to act consistently whenever possible. For example, the Territorial Sea Plan does not currently provide detailed management plans for each rocky-shore site. State agencies should refer to the Territorial Sea Plan as a framework for making these more detailed, site-specific management decisions, such as improving public access and providing parking.

When adopted by LCDC, some parts of this plan will take effect immediately, such as the provisions of Part II, Making Resources Use Decisions that carry out the meaning of Goal 19, Ocean Resources. Other parts of the plan will not take effect immediately but will depend upon subsequent agency actions, such as revising a master plan for a coastal State Park or building public interpretive facilities at rocky-shoreline areas along the coast.

Local governments also may play a role in carrying out the Territorial Sea Plan, particularly in rocky-shore areas. The Council is specifically authorized to recommend changes to both local comprehensive plan and ordinances to help the local plans become consistent with the Territorial

Sea Plan. However, there are no statutory requirements for local governments to change comprehensive plans, ordinances, or land-use regulations.

d. Adoption and Approval of the Territorial Sea Plan

The Council first must recommend the plan for adoption to the Land Conservation and Development Commission. Then, LCDC must make findings that the Territorial Sea Plan:

- carries out the policies of the Ocean Management Act;
- is consistent with applicable statewide planning goals, with emphasis on the four coastal goals; and
- is compatible with adjacent county comprehensive plans.

After making these findings, LCDC will adopt the Territorial Sea Plan and any subsequently proposed amendments, through rule making.

If the LCDC cannot make the required findings, it cannot itself amend the Territorial Sea Plan. Instead, LCDC must send the plan back to the OPAC for additional work.

e. Federal Approval

While the Territorial Sea Plan and its amendments will become part of Oregon's Coastal Management Program, federal approval of this plan is not required. However, such approval by the Secretary of Commerce under the federal Coastal Zone Management Act of 1972 will provide the state with the ability to review certain federal activities for consistency with the mandatory provisions of this plan. After adopting this plan, LCDC anticipates seeking such approval from the Secretary of Commerce.

2. Changing the Plan

After the Territorial Sea Plan is adopted by the LCDC, the Council has a continuing obligation to recommend amendments as needed to both the Oregon Ocean Resources Management Plan and the Territorial Sea Plan. Although the Territorial Sea Plan appears to be a complete document, it is not a completed plan. Rather, the Council has committed itself to a continuous process of addressing new issues and proposing necessary amendments to LCDC to make sure that the plan remains relevant and workable. The LCDC will make any amendments to the plan through official rule making.

The Council recognizes the need to provide a clear and orderly process for taking these actions because of the background work required, the complexity of policy decisions for ocean resources, and the need for scheduling the Council's work program. Accordingly, the Council will adopt clear procedures for proposing amendments to the Territorial Sea Plan. The procedures to be adopted by rule are expected to include the following steps:

a. Initiating an Amendment

There are two ways by which consideration of an amendment may reach the Council:

1.) Issues Survey

After completing this initial plan or any future additions, the Council will survey issues remaining from the Ocean Resources Management Plan and new issues that have arisen. This survey will occur at approximately one-to three-year intervals depending on the length of time the Council requires to complete plan additions. This issues-survey is intended to be the primary method by which plan amendments are initiated.

2.) Amendment Request

The Council will consider any written request for plan amendment in the same manner as those arising from the issues survey. The Council intends that the plan be as relevant and accurate as possible and recognizes that amendments to existing provisions will probably be necessary to facilitate implementation, provide more appropriate guidance to agencies, respond to public concerns, or meet changed conditions in the field. The written request may be from an interested party or from the Land Conservation and Development Commission pursuant to its rules for requesting that the Council consider work on an amendment.

b. Issue Evaluation

The Council will weigh the circumstances of the issues surveyed or the requested amendment against the Planning Considerations for Council Action (see section I.B.2.b.) and other factors to determine whether the issue is appropriate for Council action and whether work load, staff resources, and other logistical factors will make it possible to undertake an evaluation of the issue.

c. Work Program

If the Council agrees to address an issue, it will develop a work program that includes a schedule with a completion target date, public participation opportunities, any working groups or other necessary technical assistance.

d. Public Participation

The Council will include opportunities for public review throughout the planning process including public workshops, from time to time, to solicit ideas and comments about needed Council action on issues or concerns.

e. Council Approval and Submittal to LCDC

The Council will approve any plan amendments in the same manner as the initial plan and will

submit the amendment, along with any needed amendments to the Ocean Plan, to the LCDC for adoption.

3. Implementing the Plan: Legal Requirements

Because Oregon has a networked system for coastal management and planning, putting this plan into action will require the involvement and actions of many parties, including OPAC, state agencies, federal agencies, and local governments. As noted in subsection Part I.F.1.c., above, some parts of the plan, such as Part II and the site management designations of Part III.G., will take effect immediately upon approval by LCDC as part of the Oregon Coastal Management Program while other parts of the plan will be acted on over time.

This section lists the legal requirements of the various parties for implementing the plan and briefly describes actions that they need to take.

a. Ocean Policy Advisory Council

As outlined in state law, the Ocean Policy Advisory Council will play a coordinating, supervising role in carrying out the Territorial Sea Plan. However, it has no authority to take action on its own to regulate ocean uses or resources and instead will rely on state and federal agencies, primarily, to take appropriate action. The Council will continue to develop and refine the Territorial Sea Plan through amendments.

1.) Legal Requirements

ORS 196.443 specifies the duties of the Council:

- a.) Prepare a management plan for the territorial sea as described in ORS 196.471;
- b.) Provide a forum for discussing ocean-resource policy, planning, and management issues and, when appropriate, mediating disagreements;
- c.) Recommend amendments to the Oregon Ocean Resources Management Plan and Territorial Sea Plan as needed;
- d.) 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.

b. Local Governments

Coastal local governments have a great interest in the development and conservation of ocean resources. Use and management of upland areas under city or county jurisdiction can affect marine resources. In other instances, the development of resources at sea, such as commercial fisheries or petroleum reserves, can have significant impacts on local ports, labor force, retailers, housing, and the like. The legislature was concerned that local government comprehensive plans and the Territorial Sea Plan be compatible. Compatibility will require a close working relationship among the Council, state agencies, and local governments.

In addition to the statutory coordination requirements between the Council and local governments, the Council has developed mandatory consultation procedures with local governments for major ocean-development proposals that are spelled out in Part II.C. of this plan.

1.) Legal Requirements

ORS 196.465 spells out three basic ways the Ocean Policy Advisory council is to coordinate the Territorial Sea Plan with coastal local governments. These are summarized as follows:

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LINKAGES: OCEAN RESOURCES MANAGEMENT

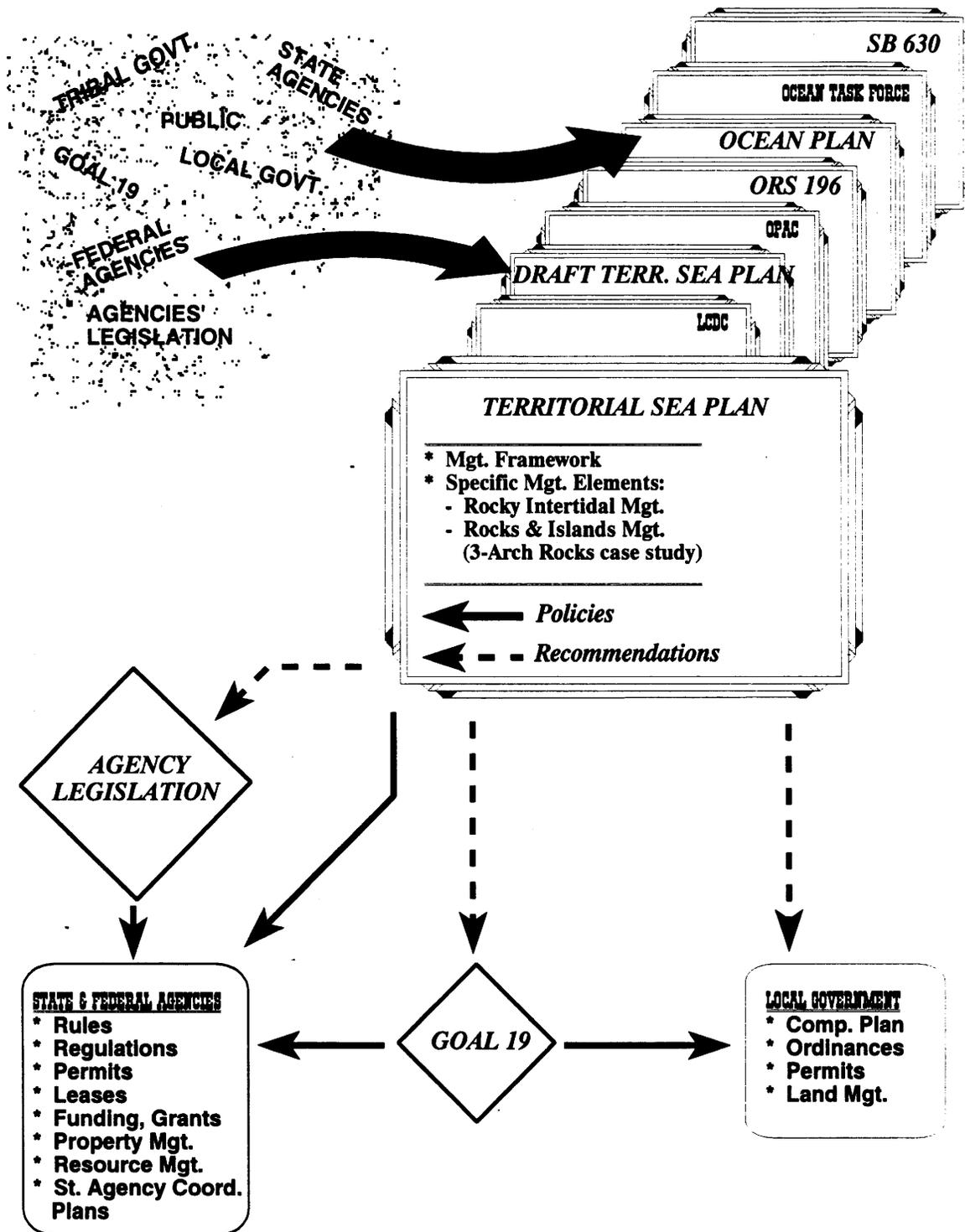


Figure 6: Territorial Sea Management Linkages With Other Ocean Management Authorities

- a.) When adopted by the Land Conservation and Development Commission, the Territorial Sea Plan must be compatible with the acknowledged comprehensive plans of adjacent coastal counties and cities;
- b.) The Council is to work with the coastal zone management association to coordinate with coastal local governments during preparation of the Territorial Sea Plan, including "provisions for mandatory consultation, as necessary, between [among] local governments, the Governor and state agencies on major ocean-development activities or actions";
- c.) The Council may recommend amendments to local comprehensive plans needed to achieve compatibility with state ocean law and policies of the Territorial Sea Plan.

c. State Agencies

State agencies will be the principal implementers of the Territorial Sea Plan. The Legislature in 1991 added three provisions to the Oregon Ocean Resources Management Act that clarify how state agencies are to implement the plan. In addition, the State Agency Coordination requirements of the state's land use planning program will come into play when state agencies carry out the plan.

1.) Legal Requirements

- a.) The act requires state agencies, within their existing authorities, to amend their programs and rules relevant to ocean resources to be consistent with the Ocean Plan and the Territorial Sea Plan (ORS 196.435(2)). This provision will ensure that the Ocean Policy Advisory Council's (OPAC) policies get incorporated in the rules and programs of the appropriate agencies.
- b.) The act makes LCDC's state agency coordination responsibilities under ORS 197.180 an official part of the Oregon Ocean Resources Management Program (ORS 196.425(5)). The LCDC coordination rule provides a ready-made set of procedures for use by state agencies to adopt the Territorial Sea Plan.
- c.) The act does not change the statutorily and constitutionally mandated responsibilities of agencies other than DLCD (ORS 196.435(2)). This provision prevents OPAC from directing state agencies to do things that the Legislature has not given the agencies the authority to do.

2.) State Agency Coordination Programs

The Oregon Legislature made LCDC's state agency coordination requirements part of the state's ocean program. All relevant ocean-management state agencies have existing "state agency coordination programs" approved by LCDC. Most of these coordination programs were developed prior to completion of the Ocean Plan and thus typically contain only generic or general statements describing that agency's relationship to the Oregon Ocean Resources Management Program.

In most cases, agencies will amend their existing coordination programs to incorporate relevant provisions of the Territorial Sea Plan. ORS 196.485 and LCDC's rules governing state agency coordination provide the mechanism for review and approval of state agency rules and programs that LCDC has not previously approved.

d. No New Agencies

No additional state agencies are needed to manage the resources of Oregon's territorial sea. The state's existing network management approach for ocean and coastal resources, which includes a strong coordination mechanism through OPAC and the Governor's Office, is appropriate to handle ocean-resource issues.

NOTE: This also appears as a policy statement in the Ocean Plan (pg. 173).

e. Federal Agencies

Federal agencies were invited to participate in the state's process for territorial sea planning. Several did so enthusiastically as a means of coordinating and strengthening their programs and objectives. These agencies will have a program incentive to follow the provisions of the plan and assist in its implementation.

Section 307 (c)(1) of the Coastal Zone Management Act of 1972 (CZMA), amended in 1990, provides that any federal agency activity is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water use in the coastal zone. Oregon's coastal zone includes the territorial sea. The amendments of 1990 overturned the decision of the Supreme Court in *Secretary of the Interior v. California* to make it clear that federal oil and gas lease sales on the outer continental shelf are subject to these consistency requirements. The term "affecting" is to be construed broadly including direct effects and indirect effects later in time or removed in distance.

Federal agencies are required to act consistently with the "enforceable" policies of a state's federally approved coastal-management program. After adoption by the Land Conservation Development Commission, this Territorial Sea Plan will be submitted to the Secretary of Commerce via the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resources Management (OCRM), for approval as part of Oregon's federally approved Coastal Management Program. After approval by OCRM, federal agencies will be required to act consistently with the mandatory or enforceable provisions of this plan.

f. The Public

ORS 196.425(1) incorporates by reference "applicable elements of the Oregon Coastal Management Program" into the Ocean Resources Management Program. Among these applicable elements are the requirements of Statewide Planning Goal 1, Citizen Involvement. Goal 1 requires that citizens be provided the opportunity to be involved in all phases of the

planning process.

Beyond any legal requirement to involve the public in plan preparation and implementation is the overriding need for informed and aware citizens to take personal responsibility to conserve and protect Oregon's ocean resources. The Council recognizes the need for programs to educate, inform, and increase awareness among the general public and various user or interest groups and to communicate the need for personal and community stewardship.

Simply put, government agencies cannot carry out this plan alone or rely on regulations and enforcement. Members of the public must play a major part in helping to meet its goals and objectives.