

Oregon Parks and Recreation Commission

November 15, 2023

Agenda Item: 9b UPDATED

Information

Public Comment Allowed: **Yes**

Topic: Request to adopt –Amending Territorial Sea Plan Rocky Habitat Site Designation (OAR 736-021-0090)

Presented by: Katie Gauthier

Background: The Oregon Land Conservation and Development Commission (DLCD) adopted amendments to Oregon’s Territorial Sea Plan Rocky Habitat Management Strategy in April 2023. As a part of this update, rocky habitat sites are now eligible for one of three management designations: Marine Research Area, Marine Garden/Education Area and Marine Conservation Area. Goals, regulations and management practices differ for each type of designation.

The management areas and their respective goals were designated by LCDC after an extensive review process led by the Ocean Policy Advisory Council. To comply with the updated plan and management goals now included in the Rocky Habitat Management Strategy, OPRD will need to update our rule language around collection of marine plants and macroalgae in marine reserves and marine protected areas in OAR 736-021-0090(4)(b).

In addition, when opening 736-021-0090 for changes, we proposed removing language in section (3) that refers to requirements for enrolled tribal members to obtain a permit from OPRD prior to collecting natural products. This language is outdated and does not reflect current agency practices. Prior to proposing opening rulemaking, the agency offered consultation to all nine federally recognized tribes.

The proposed rule was open for public comment on October 1 and closed on November 3. A public hearing was held on October 26 and had one person attend and provide oral comments. A full copy of all comments received are available on the [agency rulemaking website](#). One written comment was submitted on behalf of the Coquille Indian Tribe (included in Attachment C).

Based on requested changes in the comment, staff will make amendments to the proposed language and seek further consultation with additional tribes. The amended proposed language will be reopened for public comment and brought before the Commission in February 2024 for consideration.

Prior Action by Commission: Commission approved opening rulemaking in September 2023.

Action Requested: Information only

Attachments: Attachment A – proposed rule amendments- marked copy

9b: Attachment A: Marked Copy UPDATED

736-021-0090

Cultural, Historic, Natural and Wildlife Resources

(1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on the ocean shore state recreation area, unless the department has authorized that activity by a permit issued under ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) Except with the written permission of the department or as allowed by sections (3) or (4) of this rule, a person may not:

(a) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials; or

(c) Place, remove, roll, move any stones, logs or other objects to gain access to the ocean shore state recreation area.

(3) A persons who is an enrolled member of an Indian Tribe as defined in ORS ~~97.740~~182.162(2) may collect natural products as part of their traditional cultural heritage or as authorized in any agreement between an Indian Tribe and the Department, in accordance with procedures established by the department and in state rules. Upon request by a park employee, a person collecting natural products under this section must present tribal enrollment identification. ~~or a department issued Special Tribal Use Permit.~~

Removal for Personal Use:

(4) A person may remove small quantities of natural products from the ocean shore state recreation area for personal use without a permit as provided in subsections (a) and (b). However, the department may restrict removal of natural products to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) Souvenirs that may serve as a reminder of a person's ocean shore visit and may include a small quantity of agates and other rocks, driftwood, and similar non-living items collected for non-commercial, personal use in accordance with ORS 390.705 and 390.725. For items such as agates, sand and cobble, each person collecting must use an individual container and may not combine collections in the same container with another person. Unless otherwise restricted by the department, a person may remove:

(A) Agates and other non-living items such as shells, stones, and fossils loose on the ground, in small quantities, defined as no more than a one-gallon volume container per person per day; up to three gallons per person per calendar year.

(B) Sand: no more than a five-gallon volume container per person per day; up to 20 gallons per person per calendar year.

9b: Attachment B: Clean Copy UPDATED

736-021-0090

Cultural, Historic, Natural and Wildlife Resources

(1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on the ocean shore state recreation area, unless the department has authorized that activity by a permit issued under ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) Except with the written permission of the department or as allowed by sections (3) or (4) of this rule, a person may not:

(a) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials; or

(c) Place, remove, roll, move any stones, logs or other objects to gain access to the ocean shore state recreation area.

(3) A person who is an enrolled member of an Indian Tribe as defined in ORS 182.162(2) may collect natural products as part of their traditional cultural heritage or as authorized in any agreement between an Indian Tribe and the Department, in accordance with procedures established by the department and in state rules. Upon request by a park employee, a person collecting natural products under this section must present tribal enrollment identification.

(4) A person may remove small quantities of natural products from the ocean shore state recreation area for personal use without a permit as provided in subsections (a) and (b). However, the department may restrict removal of natural products to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) Souvenirs that may serve as a reminder of a person's ocean shore visit and may include a small quantity of agates and other rocks, driftwood, and similar non-living items collected for non-commercial, personal use in accordance with ORS 390.705 and 390.725. For items such as agates, sand and cobble, each person collecting must use an individual container and may not combine collections in the same container with another person. Unless otherwise restricted by the department, a person may remove:

(A) Agates and other non-living items such as shells, stones, and fossils loose on the ground, in small quantities, defined as no more than a one-gallon volume container per person per day; up to three gallons per person per calendar year.

(B) Sand: no more than a five-gallon volume container per person per day; up to 20 gallons per person per calendar year.

(C) Cobble: no more than a five-gallon volume container per person per day; up to 10 gallons per person per calendar year.

(D) Driftwood, for non-commercial purposes, as follows:

9b Attachment C: Summary of Comments and Staff Report

One comment was received in writing during the comment period for proposed rule changes to 736-021-0090.

Below is the full comment and staff recommendation.

Proposed rule change:

Marine plant and Macroalgae collection rule

Commenter name (if provided):

Brett Kenney

Commenter email (if provided):

brettkenney@coquilletribe.org

Date comment received:

October 31, 2023 04:27 PM

Location (if provided): North Bend, OR

Comments to proposed changes to 736-021-0090:

Thank you for the opportunity to comment on the proposed changes to the proposed rule changes relating to *the collection of marine plants and macroalgae in marine protected areas*. I am the Tribal Attorney for the Coquille Indian Tribe, a federally recognized tribal government headquartered in Oregon. The Tribe has authorized me to share a few comments for your consideration:

1. The Tribe has a few comments to the text at 736-021-0090 (3):
 - a. First, the Tribe requests that OPRD replace the definition of “Indian Tribe” based on ORS 97.740. The definition used in that statute includes all federally recognized tribes in the United States. Instead, the Tribe urges OPRD to use the definition of “Eligible Indian Tribe” located at ORS 285C.306, or to craft a new definition referencing those Oregon tribes with substantial ties to the coast: Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz and the Coquille Indian Tribe. This change would be consistent with the Territorial Sea Plan, which calls out the interests of “Oregon coastal tribes” in offshore habitats.
 - b. The Tribe requests that the proposed language to be struck here be reinserted so that tribal enrollment can be documented.
 - c. Finally, the Tribe requests that after the phrase “traditional cultural heritage” the Department insert the phrase, “or as authorized in any agreement between an Indian Tribe and the Department . . . “
2. At 736-021-0090(4)(b)(H), the Tribe requests

- a. The insertion of “or seaweeds” after the phrase “...non-living plants...”
- b. Clarification that members of Indian Tribes (as defined) may access marine reserve and marine protected areas for the purposes identified in 736-021-0090(3).

Thank you.

Staff Response:

- 1) Staff recommend changing statutory reference in 736-021-0090(3) as requested in the comment to ensure it applies to federally recognized tribal members in Oregon. This aligns with department policy for tribal traditional use.
- 2) Staff recommend retaining language ensuring tribal members will provide tribal enrollment identification if requested.
- 3) Staff recommend adding requested language under 736-021-0090(3) to include approved collection of natural products under agreements between an Indian Tribe and the department.
- 4) Staff recommend adding seaweed to 736-021-0090(7)(H) to clarify this also applies to seaweeds.
- 5) Staff recommend adding language to 736-021-0090(7)(H)(iii) clarifying that collection of natural products is allowed in protected areas by enrolled tribal members. However, changes to Division 29 marine reserves are outside the scope of this rulemaking and staff would advise the commenter to propose changes within that division if desired.