

TERRITORIAL SEA PLAN

PART 2: MAKING RESOURCE USE DECISIONS

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PART TWO: MAKING RESOURCE USE DECISIONS

Part Two of the Territorial Sea Plan describes the process for making decisions in the future about the use of Oregon's ocean resources.

This part lays a very important foundation for consistently evaluating ocean resource proposals to determine whether they satisfy Oregon's ocean resource protection policies.

Included in Part Two are requirements for:

- A. resource inventory information, evaluating environmental effects, conducting small-scale environmental disturbances to seek new information, making the final resource use decisions;
- B. Joint Review Panels;
- C. mandatory process for consulting with local coastal governments, including coastal Indian tribes.

A. RESOURCE INVENTORY AND EFFECTS EVALUATION



A. Inventory/Evaluation Required

B. Standards for Decision Making

C. Inventory Content

D. Effects Evaluation

C. INVENTORY CONTENT

- **1) The proposed action:**
 - (a) Location (using maps, charts, descriptions, etc.);
 - (b) Numbers and sizes of equipment, structures;
 - (c) Methods, techniques, activities to be used;
 - (d) Transportation and transmission modes needed to serve/support the proposed project;
 - (e) Materials to be disposed of and method of disposal;
 - (f) Physical and chemical properties of hazardous materials to be used or produced, if any;
 - (g) Navigation aids; and
 - (h) Proposed time schedule.
- **2) Location and description of all affected areas (includes onshore support facilities)**
- **3) Physical and Chemical Conditions**
 - (a) Water Depth
 - (b) Wave Regime
 - (c) Current Velocities
 - (d) Dispersal, horizontal transport, and vertical mixing
- **4) Bathymetry**
- **5) Geological Structure and Hazards**
- **6) Biological Features**
 - (a) Critical marine habitats (see Definitions);
 - (b) Other habitats important to the marine ecology, such as kelp and other algae beds, exposed seafloor gravel beds, seagrass beds, rocky reef areas, marine mammal rookeries and haulout areas, seabird rookeries, and areas where fish and shellfish congregate in large numbers;
- (c) Fish and shellfish stocks and other biologically important species;
- (d) Recreationally or commercially important finfish or shellfish species;
- (e) Planktonic and benthic flora and fauna; and
- (f) Other elements important to the primary productivity and the food chain.
- **7) Mineral Deposits**
- **8) Cultural, economic, and social uses (present and projected) associated with the affected resources, such as:**
 - (a) Commercial and sport fishing;
 - (b) Aquaculture;
 - (c) Scientific research;
 - (d) Ports, navigation, and DMD sites;
 - (e) Recreation;
 - (f) Tourism;
 - (g) Mineral extraction; and
 - (h) Waste discharge.
- **9) Significant historical or archeological sites.**

D. EFFECTS EVALUATION

- 1.) Written Evaluation. The government agency shall use the inventory information or cause it to be used to write an evaluation of all reasonably foreseeable adverse effects of the proposed actions. Where relevant, the evaluation shall describe:
 - (a) The potential short-term and long-term effects on resources and uses of the continental shelf, the Oregon nearshore ocean, and onshore areas based on the following considerations:
 - i. Biological and ecological effects, including those on critical marine habitats and other habitats, and on the species those habitats support. Factors to consider include:
 - The time frames/periods over which the effects and recovery will occur;
 - The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;
 - Maintaining populations of threatened, endangered, or sensitive species; and
 - Vulnerability of the species, population, community, or the habitat to the adverse effects of pollution, noise, habitat alteration, and human trespass;
 - ii. Conformity and compatibility with existing and projected uses of ocean resources such as fishing, recreational uses, ports and navigation, and waste discharge.
 - iii. Local and regional economies.
 - iv. Archeological and historical resources.
 - v. Transportation safety, accidents.
 - vi. Geologic hazards.
 - vii. Cumulative effects of project in conjunction with effects of past projects, other current projects, and probable future projects.

D. EFFECTS EVALUATION - CONTINUED

- 2.) Reasonably Foreseeable Adverse Effects
 - For purposes of the above evaluation, the determination of "reasonably foreseeable adverse effects" shall be based on scientific evidence. The evaluation need not discuss highly speculative consequences. However, the evaluation shall discuss catastrophic environmental effects of low probability.
- 3) Use of Available Environmental Information
 - State and federal agencies may use existing data and information from any source when complying with the requirements for resource inventory and effects evaluation. All data and information used for the inventory and evaluation, including existing data from federal environmental impact statements or assessments, shall meet the same standards of adequacy required for the inventory and the evaluation (see Subsections A.2.c. and A.2.d.)

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E. INSUFFICIENT/INCOMPLETE INFORMATION

- 1.) Choice. When any agency discovers during the decision-making process that information regarding the effects of the proposed action is insufficient or incomplete, the agency must then determine whether and how to acquire the additional information. In the situation of insufficient information, the agency has the following options:
 - (a) Terminate, suspend, or postpone the decision-making process until the information is available.
 - OR
 - (b) Determine whether the provisions of Subsection A.2.e.2. Limited Environmental Disturbance are appropriate to provide the needed information;
 - OR
 - (c) In the case of Developmental Fisheries pursuant to ORS 506.455, apply the provisions of Subsection A.2.e.3. 2.)

E. INSUFFICIENT/INCOMPLETE INFORMATION

- 2) Limited Environmental Disturbances. To obtain adequate environmental-effects information, it may be necessary to create a limited environmental disturbance and measure the effects. The state agency's decision to allow such a disturbance shall be based on the following:
 - (b) Conditions on the Limited Environmental Disturbance:
 - i. All data shall be in the public domain subject to ORS 192.410 et seq.
 - ii. The proposed limited environmental disturbance shall be scheduled only for short periods of time, as discrete pieces of research, and shall be evaluated before proceeding to additional activities.
 - (c) Work Plan: A written work plan shall be developed. Elements of the work plan shall include but not be limited to the following:
 - i. A list of the information needed to satisfy the effects evaluation of this plan.
 - ii. Specific study objectives to obtain the needed information and explanation of how the study design will meet the objectives.
 - iii. Description of study methods to meet the objectives, such as:
 - Literature review;
 - Collection of any needed baseline data;
 - Hypotheses to address the study objectives;
 - Descriptions of field sampling and data-analyses methods to be used; and
 - Use of adequate controls to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
 - iv. Supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.
 - v. Descriptions of how the data and analyses will be reported and delivered for review and approval.

E. INSUFFICIENT/INCOMPLETE INFORMATION

- 3) Developmental Fishery Harvest:

State law requires the Oregon Department of Fish and Wildlife to institute a management system for the commercial harvest of developmental fishery species, i.e. finfish or invertebrate species that are underutilized or have not been previously harvested. For some fish species very little information is available to assure sustainable harvest or to meet the inventory and effects evaluation required by this plan. Initial harvest of these species may be permitted as controlled "research-level fisheries" to gather necessary information on stocks, habitat interactions, and effects on other marine resources and users.

Each such fishery shall be conducted with an information-gathering and research plan developed by the Oregon Fish and Wildlife Commission. Conditions and approval criteria are provided in Section e.

F. ANALYSIS OF DATA & G. INVENTORY/EVALUATION CHECKLIST

- Proponents and opponents of any proposed ocean development, proposed environmental disturbance, or developmental fishery shall each be held to the same standards when analyzing resource inventories and effects evaluations or environmental disturbance data.
- The Department of Land Conservation and Development shall develop a "checklist" for assisting the relevant agencies in identifying applicable ocean management rules/requirements. The checklist will not be mandatory but merely a guide.
 - [DSL Checklist Link](#)



I. AGENCY RESPONSIBILITIES, COORDINATION

- 1) Process Coordinator
 - When multiple agencies are involved for whatever reason, a single agency among the group should serve to coordinate the participation of the agencies and the overall working of the process. "Coordinate" does not mean that an agency is authorized to make decisions for another agency regarding the other agency's compliance with Goal 19 or OPAC's ocean-management policies.
- 2) Individual Agency Responsibilities
 - When multiple agencies are involved, each is responsible for incorporating its relevant components into the inventory and evaluation. Each agency which has the responsibility to comply with OPAC's policies and Goal 19 must ultimately decide what is needed in the inventory and effects evaluation to satisfy the agency's responsibilities, and when it is adequate.
- 3) Public Participation
 - Agencies implementing the Territorial Sea Plan's policies on resource inventories and evaluations shall provide adequate opportunities for citizens to be involved in all phases of the process.

B. JOINT REVIEW PANELS

- The Ocean Plan recommends (p. 168) the creation of "project review panels" to coordinate the more complex decisions on ocean development.
- The 1991 Legislature responded by specifically authorizing OPAC to create "project review panels to address and coordinate the interests of state, federal and local governments in specific development proposals" (ORS 196.453).
- OPAC was also given authority to adopt administrative rules for the panels. In turn, OPAC has determined that the name of these coordination mechanisms should be changed to "joint review panels" (JRPs), whose scope would remain the same as for the former "project review panels".



WHAT'S COVERED BY THE JOINT REVIEW PANEL POLICIES?

- a. Purpose of JRP's
- b. Functions and Duties
- c. Membership
- d. When to Convene JRP's
- e. Who Convenes a JRP
- f. Accept Recommendations
- g. Public Meetings, Public Participation
- h. JRP Authority
- i. Administrative Rules



2. MANDATORY POLICIES (FOR JRP'S)

Joint Review Panels (JRPs) shall be used when appropriate to coordinate interagency involvement and to provide technical advice to state, federal, and local agencies regarding compliance with the Ocean Plan, the Territorial Sea Plan, and Statewide Planning Goal 19 on specific proposals to use or alter ocean resources.

JRP review and recommendations shall focus on technical issues. Specific proposals subject to JRP review may include but are not limited to the following:

- 1.) Applications for permits, leases, or other forms of approval;
- 2.) Development actions being proposed directly by an agency; such as facility construction; alteration of ocean habitat, flora, or fauna; resource management plan;
- 3.) Funding by an agency of another party's development or management actions;
- 4.) Marine resource management plans proposed by government agencies; or
- 5.) Proposed state agency administrative rules

B. FUNCTIONS AND DUTIES OF JRPS

- JRPs may perform any of the following tasks:
 - 1.) Advise on preparation of resource inventories and effects evaluations, and comment on their adequacy;
 - 2.) Review and comment on the adequacy of NEPA environmental assessments and impact statements, mitigation plans, monitoring programs, and contingency plans;
 - 3.) Advise on the design of environmental disturbances, special permit conditions, construction and operational performance standards, lease stipulations, and mitigation measures.
 - 4.) Review and comment on alternatives to the proposed action.

C. MEMBERSHIP (OF A JRP)

- 1.) Flexibility. JRP membership will be determined by OPAC on a case-by-case basis, and may vary according to the nature of the action being considered.
- 2.) Limitations. Membership on any JRP shall:
 - (a) include one non-state agency member of OPAC with no conflict of interest in the proposed action; and
 - (b) in addition, be limited to representatives of entities with regulatory, proprietary, or statutorily mandated consultative responsibilities; and
 - (c) persons not representing an entity described in (a) above, but who have relevant technical expertise and no conflict of interest in the proposed action as defined by state law.

D. WHEN TO CONVENE JRPS

- JRPs may be convened only when:
 - 1.) There is a need for coordination and review; and
 - 2.) No better mechanism exists for interagency coordination and review of the proposed action; and
 - 3.) The proposed action involves either:
 - (a) A large, complex project or several related projects that require expertise or authorities of several agencies or from outside state government;
 - OR
 - (b) A new or unique issue or project, the understanding and coordination of which would be significantly improved by additional public exposure and agency coordination.

E. WHO CONVENES A JRP?

- 1.) JRPs may be convened by:
 - (a) OPAC, upon request of a state or federal agency, a local government, or other interested party; OR
 - (b) OPAC on its own initiative.
- 2.) In the interim between regularly scheduled OPAC meetings, a majority of OPAC members or the chair of OPAC may call a meeting of OPAC to consider convening a JRP.

OTHER POLICIES OF JRP'S

f. Accept Recommendations

- Any agency may elect not to accept the JRP's recommendation but shall provide OPAC with written findings and conclusions that explain how the agency's decision is consistent with applicable statutes, rules, and policies.

g. Public Meetings,

Public Participation

- (ORS
- 1.) Open Meetings. JRP meetings shall be open to the public, consistent with Oregon open meeting laws 192.610 et seq.).
 - 2.) Opportunity for Comment. Opportunity for verbal and written comment from members of the public shall be provided at JRP meetings regarding the technical recommendations formulated by the JRP.

h. JRP Authority

JRPs shall have only such authority as granted to them by OPAC; JRPs have no independent authority.

i. Administrative Rules

OPAC shall, by administrative rule, set procedural and substantive requirements and standards it deems appropriate to carry out these policies for JRPs.

C. MANDATORY PROCESS FOR CONSULTING WITH LOCAL COASTAL GOVERNMENTS, INCLUDING COASTAL INDIAN TRIBES.

• 1. Context

The 1991 Legislature directed OPAC to create a "mandatory consultation process, as necessary, among local governments, the Governor, and state agencies on major ocean development activities or actions" (ORS 196.465(2)(f)). The purpose of the consultation process is to ensure that the (Ocean) plan and the Territorial Sea Plan are compatible with the comprehensive plans of adjacent coastal counties and cities.

2. Consultation Process Described

The mandatory process for state agencies to consult with local governments consists of three basic parts:

- Agencies inform local governments of the opportunity to comment regarding a major ocean development;
- Agencies respond in writing to local government comments;
- Agencies offer assistance to local governments if appropriate.



PART TWO: C 3. MANDATORY POLICIES

a. Purpose

Major ocean developments can have significant effects, even if secondary. Affected local government's only role in the approval of such offshore actions is to provide comment. This can be frustrating to local governments when the approving state or federal agency neither acknowledges nor explains its disagreement with received comments. Consequently, another purpose of the mandatory consultation process could be to raise the level of state and federal agencies' responses to received comments from local governments. This would not be a veto authority, but only an elevation of the current consultation process.

b. Major Ocean Development Activities

For purposes of the "local consultation process" mandated by ORS 196.465, the term "major ocean developments" means any of the following:

- 1.) Any ocean development that involves the siting of an onshore facility in a coastal county or city.
- 2.) Any ocean activity that results in a Joint Review Panel.
- 3.) Federal or state ocean leasing for oil/gas or hard mineral exploration or development (not geological or geophysical testing or sampling).
- 4.) Any ocean activity or action for which state or federal law requires approval from the Governor.
- 5.) Designation of any restricted ocean-use area, whether for resource protection (e.g., marine sanctuary) or for development (e.g., kelp lease). Included in this category are any future amendments, deletions, or additions to the rocky-shore site planning designations in the adopted Territorial Sea Plan, and future adoptions of rocky-shore site-management plans whether those actions are made by OPAC or any other state agency empowered by the plan to do so.

C. ELIGIBLE LOCAL GOVERNMENTS

- Any local coastal city or county that submits written comments to a relevant state or federal agency regarding a major ocean development is eligible for this mandated consultation process. The local government's comments shall describe how the proposed major ocean development would be:
 - 1.) Compatible or incompatible with specific provisions in the local comprehensive plan applicable to land-use decisions within the local government's land-use planning jurisdiction; OR
 - 2.) Contrary or beneficial to the interests of the community; that is, would have secondary or indirect adverse or beneficial effects which are not covered by the local comprehensive plan.

D. AGENCY RESPONSE TO COMMENTS

- **1.) State Agency Coordination Rules.** LCDC's existing "state agency coordination" rule regarding agency compatibility with local plans, OAR 660-30-070, is applicable to agency actions under this policy.
- **2.) Agencies That Must Respond.** This mandatory consultation process applies to the Governor's Office, any other state agency, or federal agency that is: (a) Proposing a major ocean development; or (b) Approving a major ocean development; or (c) Funding a major ocean development; or (d) In the case of state government, the "lead" or "coordinating" agency formulating a "state" response to a major ocean development. Such agencies must "consult" with eligible local governments as described below.
- **3.) Duty To Inform.** Agencies shall inform local coastal governments regarding major ocean developments. (a) Informing the local governments shall occur as soon after the agency learns of the development as is practical. This may mean informing the local governments before the agency is required by law to issue public notice for whatever permitting or decision-making process in which the agency is involved.

3.) DUTY TO INFORM. (CONTINUED)

- (b) Agencies shall give local governments an adequate opportunity to comment to the agency on the proposed major ocean development.
- (c) Whatever methods are used by agencies shall be sufficient to inform the local governments of the following:
 - i. The nature and location of the major ocean development;
 - ii. That the "mandatory local government consultation" process is commencing;
 - iii. The opportunity for the local governments to submit comments regarding compatibility with the local comprehensive plan as provided in Subsection 2.c "Eligible Local Governments" above; and
 - iv. The name, address, and phone number of the appropriate agency staff person(s) to contact for more information or to whom comments may be sent.

4.) AGENCY RESPONSE - LOCAL PLAN COMPATIBILITY.

The responding federal or state agency must provide a written response to each coastal city and county government which comments on whether the proposed major ocean development would be compatible with the local comprehensive plan.

(a) If the agency agrees with the local government's interpretation, then the agency shall acknowledge that agreement.

(b) If the agency disagrees with the local interpretation, then the agency shall prepare a written explanation of the agency's determination.

(c) If the agency determines that the proposed major ocean development will be incompatible with the local plan, then the agency may, or request the proponent to, do one of the following, in addition to other options in law:

i. Terminate the proposed development.

ii. Revise the proposed development to be compatible with the local comprehensive plan.

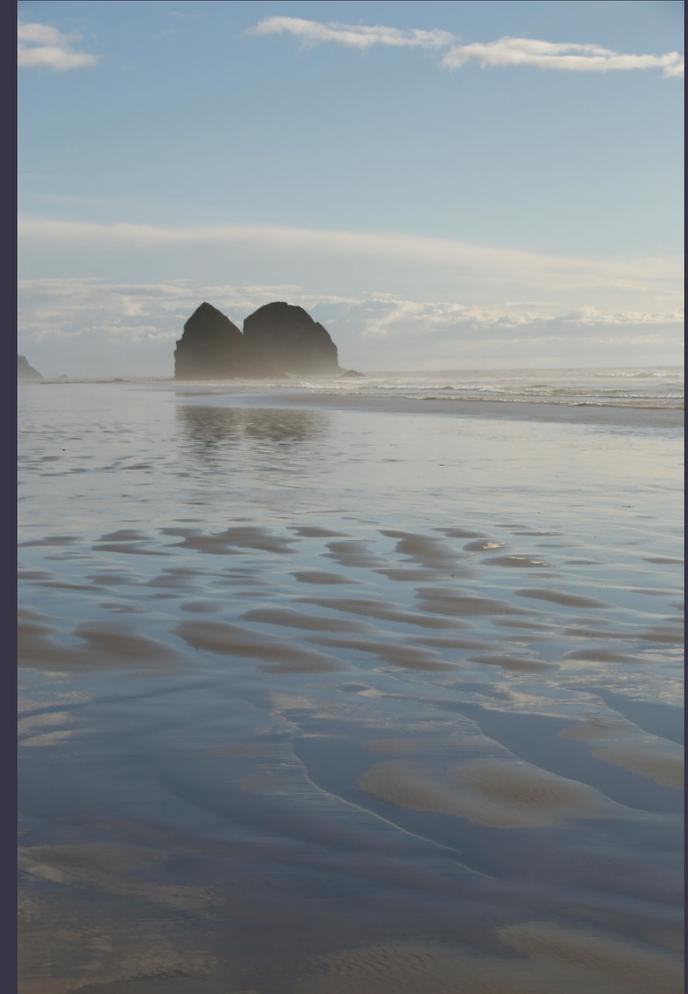
iii. Provide technical assistance to the local government to help remove the incompatibility; such as, mitigating adverse effects; amending the local comprehensive plan to accommodate the onshore effects of the proposed development.

D. AGENCY RESPONSE TO LOCAL PLAN COMPATIBILITY

If the agency determines that the proposed major ocean development will be compatible with the local plan, but the local government disagrees or determines that the proposed development will be adverse to the interests of the community, then the agency is encouraged to assist the local government in mitigating any adverse effects from the development.

Such mitigating actions may include:

- i. Revising the proposed development,
- ii. Allowing the local government sufficient time to amend its comprehensive plan and land-use ordinances to address or accommodate the onshore effects of the development, or
- iii. Working with local officials to conduct educational and informational workshops that address the expressed community concerns.



CONSULTATION RESPONSE POLICIES - CONTINUED

- **5.) Local Community Interest.** The agency is not required to provide a written response to local governments regarding any effects of the proposed development on the interests of the local community. However, the agency is encouraged to assist the local government in mitigating any of the development's adverse effects on local community interests.
- **6.) Tribal Governments.** Agencies shall notify and consult with relevant tribal governments as required by this Part 2.C. for coastal city and county governments. Relevant tribal governments are those described for purposes of the state's archeological resources protection statutes (ORS 358.905 et seq.) and whose archeological-resource administrative boundaries border or include the Pacific Ocean.
- **7.) Other Groups.** Agencies are encouraged to notify other local government groups and groups other than local governments. In responding to written comments from these groups, the agency is encouraged to provide at least a single written response that aggregates and responds to clusters of common comments.
- **8.) No New Inventory Requirements.** OPAC's "ocean framework" policies already require the resource inventory and effects evaluation for all proposed ocean developments to include the onshore effects of proposed offshore activities. Consequently, the consultation process does not create a new requirement for the proponent of a major ocean development to generate information on local community effects.

E. LOCAL PLAN "COMPATIBILITY"

- Current state statute (ORS 201.370(2)) prohibits local coastal governments from exercising their planning authorities in Oregon's territorial sea, which essentially extends seaward from the low water line. Consequently, the issue of major ocean development decisions being compatible with local comprehensive plans becomes an issue of the offshore development's onshore land-use effects, both direct and indirect. Local governments may need assistance evaluating proposed major ocean developments for plan compatibility, or appropriately amending their plans to adequately address the onshore effects of major ocean developments. The following types of technical assistance might be useful to local governments:
 - 1.) Education.
 - 2.) Model Plan Amendments.
 - 3.) Specific Plan Amendments, Mitigation.