

Territorial Sea Plan Part Four: Uses of the Sea Floor-Impact Statements: Racial Equity, Housing Cost, and Fiscal and Economic

RULEMAKING ACTION

ADOPT:

N/A

AMEND:

660-036-0001

REPEAL:

N/A

RULE SUMMARY:

This rule incorporates text amendments, by reference, for Part Four of the Oregon Territorial Sea Plan: Uses of the Sea Floor.

Need for Rule(s):

To update Part Four of the Territorial Sea Plan: Uses of the Sea Floor, originally adopted in 2001.

Documents Relied Upon, and where they are available:

- Statewide Land Use Planning Goal 19: Ocean Resources – <https://www.oregon.gov/lcd/OP/Documents/goal19.pdf>
- Oregon Territorial Sea Plan - <https://www.oregon.gov/LCD/OCMP/Pages/Territorial-Sea-Plan.aspx>

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in this state:

The department has not identified any effect on racial equity in the state.

Housing Cost Impact Statement:

This rule amendment is not expected to have any impact on housing cost.

Fiscal and Economic Impact Statement:

State agencies (ODFW, OPRD, DSL, DLCD, DEQ) will be required to act in accordance with the policies outlined in the Plan, which may include rulemaking. Agency staff will also be necessary to be members of the Joint Agency Review Team to review project proposals for feasibility, completeness, and technical merit, which will incur the use of staff resources and personnel. In addition to proposed rulemaking for multiple divisions, DSL anticipates proposing new legislation to fully comply with the policies outlined in the plan. Moreover, DSL plans to hire a facilitator and limited duration staff to help oversee and implement proposed rulemaking. Limited duration staff will also work on drafting any necessary legislative concepts.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) State agencies (ODFW, OPRD, DSL, DLCD, DEQ), local governments, and industry representatives submitting project proposals will be required to act in accordance with the policies outlined in the Plan, which may include rulemaking. Agency staff will also be necessary to be members of the Joint Agency Review Team to review project proposals for feasibility, completeness, and technical merit, which will incur the use of staff resources and personnel. In addition to proposed rulemaking for multiple divisions, DSL anticipates proposing new legislation to fully comply with the policies outlined in the plan. Moreover, DSL plans to hire a facilitator and limited duration staff to help oversee and implement proposed rulemaking. Limited duration staff will also work on drafting any necessary legislative concepts. Local Governments may have increased costs associated with complying with the plan requirements.

2) (a) The department has identified small businesses such as cable owners and operators, offshore energy companies, and similar small businesses subject to the rules.

(b) Small businesses will be expected to perform additional record keeping or administrative activities outside of the requirements of current administrative rules. These additional requirements relate to the completion of the resource and use inventory and effects evaluation.

(c) The department has identified the possibility of increased cost to small businesses associated with this rule in regard to professional services, equipment supplies, labor, or increased compliance administration. The department does not have access to sufficient available information regarding the magnitude of the potential cost increase to these small businesses to make an accurate cost estimate.

Describe how small businesses were involved in the development of these rule(s)?

A number of small business entities were involved in the development of this rule through membership of the Ocean Policy Advisory Council (OPAC) and its subcommittee, the TSP Part Four Working Group as well as through public comment. The makeup of OPAC is representative of all coastal interests. The working group was made up of representatives from the telecommunications industry, conservation groups, coastal research institutions, local government, and management agencies.

**Was an Administrative Rule Advisory Committee consulted? Yes or No?
If not, why not?**

Yes, the Ocean Policy Advisory Council (OPAC) was consulted as the Administrative Rule Advisory Committee.

RULES PROPOSED:

AMEND: 660-036-0001

RULE SUMMARY: This rule incorporates text amendments for Part Four of the Oregon Territorial Sea Plan.

**CHANGES TO RULE:
660-036-0001**

Territorial Sea Plan: Uses of the Sea Floor

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan Part Four: Uses of the Sea Floor, that the Commission approved on December 1, 2000 and November xx, 2023.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

~~Telecommunication Cables, Pipelines, and Other Utilities~~

~~(1) Oregon's coast is a prime landing zone for fiber-optic telecommunication cables that cross the ocean floor from sites around the Pacific Rim. Other utilities, such as natural gas pipelines, may eventually be routed across Oregon's Territorial Sea bed. Proper placement of utility easements and installation of fixtures is required to avoid damage to or conflict with other ocean uses, such as commercial fishing, and to reduce or avoid adverse effects on marine habitats. State agencies, such as the Division of State Lands, the Department of Fish and Wildlife, the Oregon Parks and Recreation Department, and the Department of Land Conservation and Development, need clear policies and standards for reviewing and approving the routing and installation of utilities on the seafloor of Oregon and adjacent federal waters.~~

~~(2) Policies. When making decisions to approve routing, placement, or operation of a seafloor utility or fixture, state and federal agencies shall:~~

~~(a) Protect ocean fisheries and other ocean uses from any adverse effects that may be caused by installation or operation of cables, pipelines, or other fixtures by requiring that such routing, placement, or operation:~~

~~(A) Avoid conflicts between commercial or recreational fishing or other ocean use activities and utilities, as a first priority;~~

~~(B) Reduce any adverse effects when conflicts cannot be avoided; and~~

~~(C) Mitigate for adverse effects after first reducing them to the minimum practicable.~~

~~(b) Protect marine habitat, fishery areas, and other marine resources as required by Statewide Planning Goal 19, Ocean Resources, and the Oregon Territorial Sea Plan; and~~

~~(c) Promote direct communication between affected ocean users to resolve or avoid conflicts and require written agreements among the parties when necessary to ensure communication and memorialize agreements.~~

~~(3) Implementation Requirements. When approving the routing, placement, or operation of seafloor utility, state and federal agencies shall avoid or reduce conflicts or adverse effects on other ocean users through the use of one or more of the following:~~

~~(a) Burial:~~

~~(A) In state waters: All telecommunication cables, pipelines, and other fixtures, crossing or affixed to state lands of the territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of the Ocean Shore Recreation Area), shall be buried so as to ensure continuous burial unless the approving state agencies make findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture have been reduced, avoided, or mitigated to the extent practicable.~~

~~(B) In federal waters: Decisions to permit burial of cables, pipelines, or other fixtures crossing or affixed to the seabed of the outer continental shelf (beneath federal waters) to a depth of 2,000 meters off Oregon, will be deemed consistent with this state policy. When a federal agency does not require burial in waters to this depth, the state may concur that the decision is consistent with state policy only if the federal agency makes findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture, have been reduced, avoided, or mitigated to the extent practicable.~~

~~(C) Burial shall be certified by the contractor to the easement granting agency.~~

~~(D) The easement granting agency shall require that cables, pipelines, or other utility fixtures shall be inspected periodically and after any major geologic event, such as subduction zone earthquake to ensure continued burial.~~

~~(b) Communication and coordination. Written agreements between the applicant and fishers or other users shall be required by the easement granting agency as evidence of communication and coordination. Such agreements may coordinate work, determine routing, identify routes, respond to emergencies, provide for mitigation of adverse effects, or specify procedures for on-going communication. Written agreements shall specify how fishers or other users and the applicant will resolve disputes over lost fishing gear, damage to seafloor utilities, or liability for such actions.~~

~~(c) Controlling the location of utilities. Locations for new cables, pipelines, or other utilities shall conserve areas available to ocean fisheries, prevent or avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other public resources of the seafloor or ocean shore. New rights of way may be required to be located as close to existing rights of way as possible or with sufficient capacity to enable future expansion within the approved right of way.~~

~~(d) Single point of contact. The Division of State Lands shall coordinate approvals of easements and permits in consultation with the Parks and Recreation Department, the Department of Fish and Wildlife, the Department of Land Conservation and Development, the Department of Geology and Mineral Industries, and coastal local governments, as appropriate. The Department of Land Conservation and Development will use its authority under the federal Coastal Zone Management Act to review federal permits to ensure that they are consistent with state requirements.~~

Statutory/Other Authority: ORS 196.465, 196.471 & 197.040

Statutes/Other Implemented: ORS 196.443, 196.465, 196.471, 197.040, & Or Laws 2021, ch 534, §§ 2-4.

History:

LCDD 1-2001, f. 1-25-01, cert. ef. 1-26-01