

Oregon Territorial Sea Plan

Adopted December 1, 2000



Commented [CM*D1]: This will be the working draft for proposed amendments.

PART FOUR: Uses of the Seafloor

These amendments were adopted by the Land Conservation and Development Commission on December 1, 2000, based on a recommendation from the Ocean Policy Advisory Council, January 28, 2000. These amendments are consistent with administrative rules adopted by the Oregon State Land Board in August, 1999, governing easements for submarine fiber-optic cables.

A. TELECOMMUNICATION CABLES, PIPELINES, AND OTHER UTILITIES

1. Background

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~~ **Department** 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.

[NOTE: In approving these plan policies for submittal to the Land Conservation and Development Commission in January, 2000, the Ocean Policy Advisory Council approved the addition of explanatory background text, maps, and illustrations prior to publication of the amended plan. This background material will in no way affect the mandatory policies of this section.]

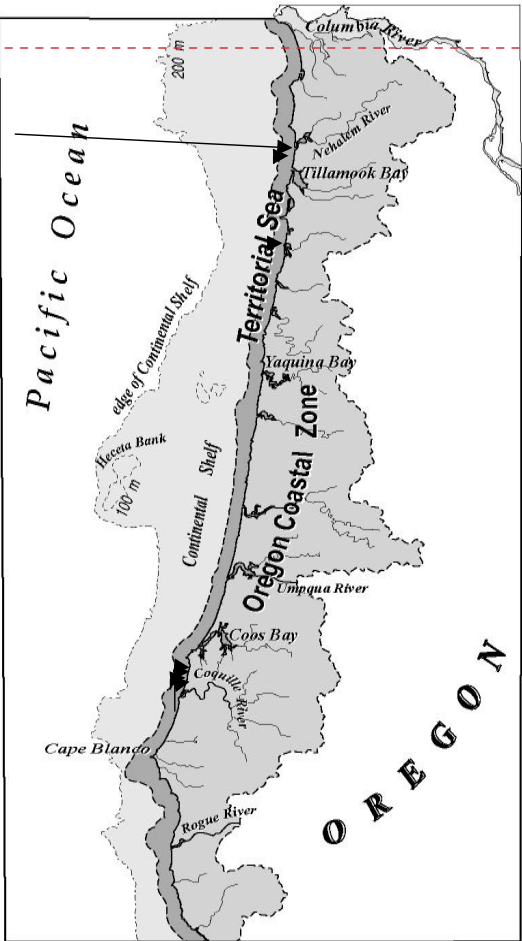
Commented [CM*D2]: During the Third Working Group Meeting it was noted that the background section should be updated to include newer technologies (hydrogen fuel, offshore energy, etc)

**Oregon Coast Fiber
Optic Cable Landings**

WCI-Alaska Northstar 1999
Southern Cross 2000
Nedonna Beach

North Pacific -1 1991
Pacific City

China-US Segment 19 2000
TPC-5 North 1995
TPC-5 South 1995
China-US Segment E1 2000
Bandon



Commented [CM*D3]: Scott McMullen -Remove graphic, and add a Map Appendix for Part Four with a map showing current cables

Commented [CM*D4]: This figure should be updated

NOTE: The following policies and implementation requirements are mandatory. Decisions of state and federal agencies with respect to approvals of easements or installation of utilities on the seafloor in Oregon's territorial waters and ocean shore must conform with them as required in the Oregon Territorial Sea Plan.

Commented [CM*D5]: The question of the TSP authority to direct federal agencies has come up numerous times and the entire document will be reviewed for federal consistency applicability before a final draft is submitted to the OPAC

2. Policies

Note: Terminology

As used in the following sections, "cable(s)" includes a cable used to conduct electricity or light that is placed on state-owned submerged or submersible lands within the territorial sea and any facilities associated with the cable.

As used in the following sections. "project" includes evaluation, siting, routing, placement, operation, or removal of a cable, pipeline, seafloor utility or fixture.

Commented [CM*D6]: Added for clarity. Perhaps a terminology section can be added for definitions of this and other terms

When making decisions to approve projects related to a cable, pipeline, seafloor utility or fixture, state and federal agencies shall:

- a. Maintain and protect renewable marine resources (i.e. living marine organisms), ecosystem integrity, marine habitat, and areas important to fisheries, navigation, recreation and aesthetic enjoyment from adverse effects that may be caused by projects related to cables, pipelines, or other fixtures by requiring that such actions:
 - 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the marine ecosystem and coastal communities, and avoid conflicts between commercial or recreational fishing, or other ocean/coastal-use activities and utilities, and give first priority to the conservation and use of renewable marine resources;
 - 2.) reduce any adverse effects when conflicts cannot be avoided;
 - 3.) mitigate for adverse effects after first reducing them to the minimum practicable; and
 - 4.) Restore the natural characteristics of a site to the extent practicable when the project is decommissioned and removed. (*see also* Statewide Planning Goal 19, Ocean Resources and the Oregon Territorial Sea Plan)
- b. Strongly encourage applicants to engage with local, state and federal agencies, community stakeholders, tribal governments and affected ocean users in a collaborative agreement-seeking process prior to formally requesting authorization to initiate a project. Promote direct communication and collaboration between the applicant and affected ocean users and coastal communities to resolve or avoid conflicts and require written agreements among the parties when necessary to ensure communication and memorialize agreements.

Commented [CM*D7]: The five sections which were here in the first draft of amendments have been combined into two sections to reduce redundancy and for clarity

Commented [CM*D8]: There is concern from industry representatives that this section is vague as far as who an applicant will be required to have written agreements with

3. Implementation Requirements

Regulating agencies shall apply the following implementation requirements (detailed below) when considering a proposal for a project related to cables, pipelines, or other fixtures within the Oregon Territorial Sea. This includes the utility cables that transmit the electrical energy from a renewable energy facility to the on-shore substation, as prescribed in Part Five of the Territorial Sea Plan, Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities. The requirements in Part Two, Making Resource Use Decisions, sections A and B will not apply to projects related to cables, pipelines, or other fixtures within the Oregon Territorial Sea.

When approving projects related to a **cable, pipeline, or other** seafloor utility, state and federal agencies shall avoid or reduce conflicts or adverse effects on natural resources or other ocean users through the following measures::

a. Burial.

- 1.) In state waters: All 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

2.) 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~~ 1500 meters, or to a latitude/longitude agreed to by affected stakeholders, ~~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~~ or 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.

Commented [CM*D9]: Text change requested by OFCC as explained by Scott McMullen at the Third TSP Part Four Working Group Meeting

3.) Burial shall be certified by the contractor to the easement-granting agency.

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

Commented [CM*D10]: Text change requested by OFCC as explained by Scott McMullen at the Third TSP Part Four Working Group Meeting

b. State Agency Review Process

State agencies shall apply the policies and provisions of the Oregon Ocean Resources Management Plan, Oregon Territorial Sea Plan, and Goal 19 Ocean Resources as required to comply with State Agency Coordination Programs (OAR chapter 660, divisions 30 and 31). In accordance with the federal Coastal Zone Management Act, federal consistency regulations (15 CFR Part 930), and ORS 196.435, the Department of Land Conservation and Development will review the consistency certification together with required necessary data and information submitted by the applicant for federal authorization for projects related to cables, pipelines, or other fixtures within the Oregon Territorial Sea to ensure the project is consistent with enforceable policies of the Oregon Coastal Management Program, including the Territorial Sea Plan. The Department of State Lands (DSL) shall coordinate the review of applications for easements in the Territorial Sea in consultation with the Joint Agency Review Team (JART) as described below.

Commented [CM*D11]: There were requests to clarify this section because multiple permits other than the easement are required for any project. Perhaps state in preapplication stage? But there should be a regulatory trigger.

c. JART Project Review Process and Coordination

DSL shall convene the JART during the pre-application and application phases in order to facilitate the coordination of state and federal agencies, in consultation with local jurisdictions, as they apply their separate regulatory, proprietary, or other authorities to the review of a proposed cable, pipeline or other utility in the territorial sea and associated landing sites.

A.) DSL will invite representatives from the following agencies, jurisdictions and organizations to be members of the JART:

- 1.) Departments of Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Environmental Quality, and Geology and Mineral Industries, and other agencies with regulatory or planning authority, or advisory expertise, applicable to the proposed project and location as necessary;
- 2.) Federal agencies, as invited, with regulatory or planning authority applicable to the proposed project and location;

Commented [CM*D12]: This was added to note that not all the agencies listed have a direct regulatory or planning authority over undersea cables (DOGAMI)

- 3.) Local jurisdictions including representatives from affected cities, counties, and their affected communities, and affected port districts;
- 4.) Statewide and local organizations and advisory committees, as invited, to participate in the JART application of specific standards, including but not limited to those addressing areas important to fisheries, ecological resources, recreation and visual impacts; and,
- 5.) Federally recognized Coastal Tribes in Oregon.

B.) JART Roles and Responsibilities

- 1.) The JART will coordinate with DSL on the pre-application review process, and comment on the adequacy of the resource inventories and effects evaluations required under subsection 3.d (Resource and Use Inventory and Effects Evaluation)
- 2.) The JART will make recommendations to DSL on the approval of Territorial Sea easements and other authorizations, and to other applicable regulatory agencies on their decision to permit, license or authorize a proposed cable, pipeline or other utility in the territorial sea or associated landing sites
- 3.) The JART recommendations are advisory; regulating agencies who are members of the JART still operate in accordance with their own rules and statutory mandates.
- 4.) DSL may acquire the services of technical experts to assist the JART in analyzing specific subject information such as marine business economics and operations, as necessary to conduct the application review.

d. Resource and Use Inventory and Effects Evaluation

An applicant must provide the regulating agencies the data and information to complete the Resource and Use Inventory and Effects Evaluation, prior to the regulating agencies making any decision. State agencies will assist the applicant by providing readily available data and other information as applicable to the review process. An applicant may use relevant inventory information included in a project application to a federal agency to meet the requirements of this subsection.

1.) Purpose of the Resource and Use Inventory and Effects Evaluation

The purpose of the Resource and Use Inventory and Effects Evaluation is to provide the regulating agencies the data and information necessary to make a decision based on the potential coastal effects the project might incur. Resource and Use Inventory and Effects Evaluation will help identify where the applicant needs to address deficiencies. The regulating agency will use the evaluation to develop specific measures for environmental protection and mitigation as well as measures to protect other ocean uses.

2.) Sufficiency of Resource and Use Inventory and Effects Evaluation

An applicant must provide information and data to complete the Resource and Use Inventory and Effects Evaluation that is sufficient to identify and quantify the short-term and long-term effects of the proposed cable, pipeline or other utility in the territorial sea and associated landing sites on the affected marine resources and uses.

3.) Use of Available Environmental Information

Regulating agencies may allow the applicant to use existing data and information from other authoritative sources, when complying with the requirements for the Resource and Use Inventory and Effects Evaluation.

4.) Inventory Content

To evaluate the magnitude of the proposed project, the likelihood of project effects, and the significance of the resources and uses that the project may affect, regulating agencies shall require that the applicant include consideration of certain factors in the inventory. The Resource and Use Inventory and Effects Evaluation apply to all proposed cables, pipelines or other utilities in the territorial sea and associated landing sites for which an applicant pursues a DSL Territorial Sea easement, unless the requirements are waived by DSL or otherwise addressed in another subsection of the plan.

- A.) Information regarding projects related to cables, pipelines, or other fixtures within the Oregon Territorial Sea:
 - (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 systems needed for service and support;
 - (e) Materials to be disposed of and method of disposal;
 - (f) Physical and chemical properties of hazardous materials, if any, to be used or produced;
 - (g) Navigation aids; and
 - (h) Proposed time schedule.
- B.) Location and description of all affected areas, including, but not limited to:
 - (a) Route of the cable, pipeline, or other utility;
 - (b) Adjacent areas that may be affected by physical changes in currents and waves caused by the project;

- (c) Utility corridor transiting the territorial sea and ocean shore; and
 - (d) Shoreland facilities.
- C.) Physical and chemical conditions including, but not limited to:
 - (a) Water depth;
 - (b) Wave regime;
 - (c) Current velocities;
 - (d) Dispersal, horizontal transport, and vertical mixing characteristics;
 - (e) Meteorological conditions; and
 - (f) Water quality.
- D.) Bathymetry (bottom topography) and Shoreline Topography (LIDAR Light Detection and Ranging)
- E.) Geologic structure, including, but not limited to:
 - (a) Geologic hazards, such as faults or landslides of both marine and shoreline facility areas;
 - (b) Mineral deposits;
 - (c) Seafloor substrate type; and
 - (d) Hydrocarbon resources.
- F.) Biological features, including, but not limited to:
 - (a) Critical marine habitats (see Part Five, Appendix A);
 - (b) Other marine habitats;
 - (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;
 - (f) Other elements important to the marine ecosystem; and
 - (g) Marine species migration routes.
- G.) Cultural, economic, and social uses affected by the renewable energy facility, including, but not limited to:

- (a) Commercial and sport fishing;
 - (b) State or federally protected areas;
 - (c) Scientific research;
 - (d) Ports, navigation, and dredge material disposal sites;
 - (e) Recreation;
 - (f) Coastal community economy;
 - (g) Aquaculture;
 - (h) Waste water or other discharge;
 - (i) Utility or pipeline corridors and transmission lines;
 - (j) Military uses; and
 - (k) Aesthetic resources.
- H.) Significant historical, cultural or archeological resources.
- I.) Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project.

5.) Written Evaluation.

Regulating agencies shall require the applicant to submit a written evaluation of all the reasonably foreseeable adverse effects associated with projects related to cables, pipelines, or other fixtures within the Oregon Territorial Sea and associated shoreline facilities. For purposes of the evaluation, the submittal shall base the determination of “reasonably foreseeable adverse effects” on scientific evidence. The evaluation shall describe the potential short-term and long-term effects of the proposed project on marine resources and uses of the Oregon territorial sea, continental shelf, onshore areas and coastal communities based on the inventory data listed in paragraph 3.d.4 and the following considerations:

- A.) Biological and Ecological Effects: Biological and ecological effects include those on critical marine habitats and other habitats, and on the species those habitats support. The evaluation shall determine the probability of exposure and the magnitude of exposure and response, as well as the level of confidence (or uncertainty) in those determinations. The evaluation need not discuss highly speculative consequences. However, the evaluation shall discuss catastrophic environmental effects of low probability. Factors to consider include, but are not limited to:
- (a) The time frames/periods over which the effects will occur;
 - (b) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;

- (c) Maintaining populations of threatened, endangered, or sensitive species;
 - (d) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
 - (e) The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents.
- B.) Current Uses: Evaluate the effects of the project on current uses and the continuation of a current use of ocean resources such as fishing, recreation, navigation, and port activities. Factors to consider include, but are not limited to:
 - (a) Local and regional economies;
 - (b) Archeological and historical resources; and
 - (c) Transportation safety and navigation.
- C.) Natural and Other Hazards: Evaluate the potential risk to project, in terms of its vulnerability to certain hazards and the probability that those hazards may cause loss, dislodging, or drifting of structures, buoys, or facilities. Consider both the severity of the hazard and the level of exposure it poses to the renewable marine resources and coastal communities. Hazards to be considered shall include slope failures and subsurface landslides, faulting, tsunamis, variable or irregular bottom topography, weather related, or due to human cause.
- D.) Cumulative Effects: Evaluate the cumulative effects of a project, including the shoreland component, in conjunction with effects of any prior phases of the project, past projects, other current projects, and probable future projects. The evaluation shall analyze the biological, ecological, physical, and socioeconomic effects of project and other projects along the Oregon coast, while also taking into account the effects of existing and future human activities and the regional effects of global climate change.
 - (a) In conducting the cumulative effects analysis, the applicant shall focus on the specific resources and uses, as detailed under paragraph 3.d.4 that may be affected by the incremental effects of the proposed project and other projects in the same geographic area. The evaluation shall include but not be limited to consideration of whether:
 - i. the resource and uses are especially vulnerable to incremental effects;
 - ii. the proposed project is one of several similar projects in the same geographic area;
 - iii. other developments in the area have similar effects on the resources and uses;

iv. these effects have been historically significant for the resource and uses; and

v. other analyses in the area have identified a cumulative effects concern.

e. 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.

f. 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.

g. Single point-of-contact.

The ~~Division~~ **Department** 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.