

1 **Oregon Territorial Sea Plan**

2
3 **DRAFT PART FIVE:** *(This document is a working Draft only prepared by TSPAC)*

4 **Use of the Territorial Sea for the Development of**
5 **Renewable Energy Facilities or Other Related**
6 **Structures, Equipment or Facilities**

7
8 **PART FIVE** of the Territorial Sea Plan describes the process for making decisions
9 concerning the development of renewable energy facilities (e.g., wind, wave, current, or
10 thermal etc)¹ in the state territorial sea, and specifies the areas where that development
11 may be sited. The requirements of Part Five are designed to protect areas important to
12 renewable marine resources (i.e. living marine organisms), ecosystem integrity, marine
13 habitat and areas important to fisheries from the potential adverse effects of renewable
14 energy development, and to identify the appropriate locations for that development which
15 minimize the potential adverse impacts to existing ocean resource users and coastal
16 communities.

17
18 Oregon’s renewable energy portfolio lists ocean energy as renewable sources with
19 potential to reduce dependence on fossil fuels.² Renewable ocean energy facilities
20 development may present opportunities to apply technologies that rely on wave, wind,
21 current or thermal energy, that may potentially reduce the environmental impact of fossil
22 fuels. If developed in a responsible and appropriate manner, in accordance with the
23 requirements of this section and other applicable state and federal authorities, renewable
24 ocean energy may help preserve Oregon’s natural resources and enhance our quality of
25 life.

26
27
28 **A. Renewable Energy Facilities Development**

29 **1. Background**
30
31

¹ For the purposes of this chapter of the Territorial Sea Plan, the term “renewable energy facilities development or other related structures, equipment or facilities,” means energy conversion technologies and devices that convert the energy or natural properties of the water, waves, wind, current or thermal to electrical energy, including all associated buoys, anchors, energy collectors, cables, control and transmission lines and other equipment that are a necessary component of an energy conversion device research project, demonstration project or commercial operation. The terms “renewable energy facility” or “renewable energy facilities” will be used to describe any and all components of these developments.

² The state’s renewable energy portfolio is described under ORS 469A.025 Renewable energy sources. (1) Electricity generated utilizing the following types of energy may be used to comply with a renewable portfolio standard to include: (a) Wind energy, (b) Solar photovoltaic and solar thermal energy, (c) Wave, tidal and ocean thermal energy, and (d) geothermal energy.

1 Oregon’s territorial sea has been identified as a favorable location for siting renewable energy
2 facilities for research, demonstration and commercial power development. These facilities may
3 vary in the type and extent of the technologies employed and will require other related
4 structures, equipment or facilities to connect together, anchor to the seafloor and transfer
5 energy to on-shore substations. The State of Oregon will require the proper siting and
6 development of these facilities in order to minimize damage to or conflict with other existing
7 ocean uses and to reduce or avoid adverse effects on marine ecosystems and coastal
8 communities.

9
10 State agencies, including the Oregon Departments of State Lands, Fish and Wildlife, Parks and
11 Recreation, Environmental Quality, Land Conservation and Development, Water Resources,
12 and Geology and Mineral Industries, need specific policies and standards for considering the
13 siting and regulation of renewable energy facility development in the territorial sea. The State
14 also needs specific policies and standards to guide federal agencies in the siting and regulation
15 of renewable energy facilities development located in federal waters adjacent to the Oregon
16 territorial sea.³

17
18 **NOTE: *The following policies and implementation requirements are mandatory. Decisions***
19 ***of state and federal agencies with respect to approvals of permits, licenses, leases or other***
20 ***authorizations to construct, operate, or maintain any facility to produce, transport or support***
21 ***the generation of renewable energy within Oregon’s territorial waters and ocean shore must***
22 ***conform with the requirements mandated in the Oregon Territorial Sea Plan. The***
23 ***enforceable policies of the Territorial Sea Plan and the Oregon Coastal Management***
24 ***Program are applicable to those federal actions that impact Oregon’s coastal zone and are***
25 ***subject to the federal consistency requirements of the federal Coastal Zone Management Act.***
26

27 28 **2. Policies**

29 The following policies apply generally to the development of renewable energy facilities within
30 the Oregon Territorial Sea, and establish the guiding principles for the implementation
31 requirements listed in section B. below. When making decisions to authorize the siting,
32 development and operation of renewable energy facilities within the territorial sea, state and
33 federal agencies shall⁴:

- 34
35 **a.** Maintain and *protect* renewable marine resources (i.e. living marine organisms),
36 ecosystem integrity, *marine habitat* and *areas important to fisheries* from adverse
37 effects that may be caused by the installation or operation or removal of renewable
38 energy facility by requiring that such development or operation:

- 39
40 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the
41 marine ecosystem and coastal communities, and give priority to the conservation and
42 use of renewable marine resources as a first priority;

³ A listing and description of the state and federal agencies with regulatory, consultation or other authority or responsibility for management of ocean resources is located in Part 1 of the Territorial Sea Plan.

⁴ State and federal agencies making decisions to authorize the siting, development and operation of renewable energy facilities development or other related structures, equipment or facilities within the Oregon Territorial Sea, will be referred to as “the regulating agency” or “regulating agencies”.

- 1
2 2.) Minimize effects by limiting the degree or magnitude of the action and its
3 implementation; and
4
5 3.) Rectify or mitigate the effects that occur during the lifetime of the facility by
6 monitoring and taking appropriate corrective measures through adaptive management.
7
8 4.) Restore the natural characteristics of a site to the extent practicable by requiring the
9 decommissioning and removal of the facility and structures.
10
11 **b.** Protect marine renewable resources, the biological diversity and functional integrity of
12 marine ecosystem, important marine habitat, areas important to fisheries, navigation,
13 recreation and aesthetic enjoyment as required by Statewide Planning Goal 19.
14
15 **c.** Promote direct communication and collaboration between an applicant⁵ for a state or
16 federal authorization for the siting, development and operation of renewable energy
17 facilities and affected ocean users and coastal communities to reduce or avoid conflicts.
18 Agencies will strongly encourage applicants to engage with local, state and federal
19 agencies, community stakeholders, tribal governments and affected users in a
20 collaborative agreement-seeking process prior to formally requesting authorization to
21 initiate a project.⁶
22
23 **d.** Limit the potential for unanticipated adverse impacts by requiring, as necessary, the use
24 of pilot projects and phased development to collect data and study the effects of the
25 development on the affected marine resources and uses.
26
27 **e.** Promote the research and responsible development of new ocean-based renewable
28 energy sources including wave, tidal and wind, that meet the state's need for economic
29 ally affordable sources of alternative renewable electric power.
30
-

31 **B. Implementation Requirements**

32 The following implementation requirements will be applied by state and federal agencies when
33 considering a proposal for the placement or operation of a renewable energy facility
34 development within the Oregon Territorial Sea. Regulating agencies shall comply with the
35 standards and procedural requirements in Part 5 of the Territorial Sea Plan as prescribed below.
36 This includes the cables, connectors or other transmission devices that connect, anchor, support
37 or transmit energy between the separate components within a renewable energy facility. The
38 requirements in Part 4, Uses of the Seafloor for Telecommunication Cables, Pipelines, and
39
40

⁵ An applicant for a state permit, license, lease or other authorization for renewable energy facilities development or other related structures, equipment or facilities will be referred to as "the applicant".

⁶ The Department of State Lands pre-application requirements under OAR 141-140-0040 (Rules Governing the Placement of Ocean Energy Conversion Devices on, in or over State-Owned-Land within the Territorial Sea) requires applicants to meet with the agency prior to applying for a lease or temporary authorization.

1 other Utilities, will apply to the utility cables that transmit the electrical energy from the
2 renewable energy facility to the on-shore substation.⁷

3
4 **1. Siting: areas designated for renewable energy facilities development.**

5
6 **a. In State Waters:**

7 Pursuant to the requirements for amending the Territorial Sea Plan under ORS 196.471,
8 and as consistent with the statewide planning goals, the Land Conservation and
9 Development Commission has identified areas for the development of renewable energy
10 facilities.⁸ Renewable energy facilities development within the state lands of the
11 territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of
12 the Ocean Shore State Recreation Area) shall be sited within the areas designated for
13 that use so as to avoid, reduce or mitigate the adverse effects of that development, and
14 to protect: renewable marine resources, biological diversity and functional integrity of
15 marine ecosystem, important marine habitat, and areas important to fisheries, as defined
16 in Statewide Planning Goal 19 Ocean Resources. (see appendix or map)

17
18
19 **b. In Federal Waters:**

20 Decisions to permit, license, or otherwise authorize renewable energy facilities
21 development within the waters and seafloor of the outer continental shelf adjacent to the
22 Oregon Territorial Sea will be reviewed by the Oregon Department of Land
23 Conservation and Development for consistency with the Oregon Territorial Sea Plan
24 and the applicable enforceable policies of the Oregon Coastal Management Program.
25 Federal actions affecting coastal uses and resources within the Oregon Coastal Zone
26 shall be supported by environmental studies and analysis, as prescribed below, to ensure
27 compliance with the enforceable policies of Oregon Territorial Sea Plan and the Oregon
28 Coastal Management Program.⁹

29
30
31 **2. State Agency Review Process**

⁷ The requirements in Part 2 of the Territorial Sea Plan, Making Resource Use Decisions, will not apply to the evaluation, siting or operation of renewable energy development or other related structures, equipment or facilities.

⁸ ORS 196.471 Territorial Sea Plan review requirements, provides in part (1) The Land Conservation and Development Commission shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments: (a) Carry out the policies of ORS 196.405 to 196.515; and (b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals. (2) After making the findings required by subsection (1) of this section, the commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program.

⁹ The regulations for federal consistency with approved state coastal programs are prescribed in 15 CFR 930. Energy projects are defined under § 930.123 Definitions as (c) The term “energy project” means projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.

1
2 State agencies apply the policies and provisions of the Territorial Sea Plan as required to
3 conform with ORS 196.485 Oregon Ocean Resources Management, and ORS 197.180 State
4 Agency Coordination agreements (OAR 660 Divisions 030 and 031), and Goal 19 Ocean
5 Resources.

6
7 The Department of State Lands shall coordinate the review of requests for approvals of
8 leases, temporary use permit, easements and removal-fill in consultation with the
9 Departments of Fish and Wildlife, Parks and Recreation, Environmental Quality, Land
10 Conservation and Development, Water Resources, and Geology and Mineral Industries,
11 Energy, and coastal local governments, and tribal governments as appropriate. These
12 agencies, with the addition of the regulating federal agencies, will constitute the joint
13 agency review team described in subsection B.2 above. The Department of Land
14 Conservation and Development will use its authority under the federal Coastal Zone
15 Management Act to review the consistency determination submitted by the applicant for
16 federal authorization for a renewable energy facilities development to ensure the project is
17 consistent with enforceable policies of the Oregon Coastal Zone Management Program,
18 including the Territorial Sea Plan.

20 **3. Project Review Process and Coordination**

21
22 A joint agency review team (JART), as described above, shall be convened by the
23 Department of State Lands in order to facilitate the coordination of state and federal
24 agencies as they apply their separate regulatory or other authorized responsibilities to the
25 review of a proposed renewable energy facility development. The team shall consist of the
26 state and federal agencies with regulatory or planning authority applicable to the proposed
27 project and location, the affected local jurisdictions, and may also include local interest
28 groups and advisory committees. The joint agency review team will coordinate the review
29 process, and comment on the adequacy of the resource inventories and effects evaluations
30 required under subsection B.4 Resource Inventory and Effects Evaluation Standards, below,
31 NEPA environmental assessments and environmental impact statements. The joint agency
32 review team will also consider the adequacy of the information provided for the operation
33 plan, as required under Section C. Operation Plan Development below, including the
34 monitoring requirements, mitigation measures, adaptive management plans, construction
35 and operational performance standards, or any other special conditions that may be applied
36 pursuant to the lease, permit, license or other authorization by the regulating state agency.

37
38 The regulating state agency shall require and verify that an applicant provides
39 documentation of their communication and coordination efforts with local communities,
40 interest groups and advisory committees. Those efforts shall, at a minimum, include
41 information on the proposed project operation protocols, response to emergencies and
42 procedures for on-going communication as specified in Section C. Operation Plan
43 Development, below.

45 **4. Resource Inventory and Effects Evaluation Standards**

46
47 Regulating agencies will require a resource inventory and effects evaluation be prepared by
48 the applicant, as required by this section, prior to making any decision. State agencies will

1 assist the applicant by providing available data and other information as applicable to the
2 review process.

3
4 **a. Sufficiency of Inventory and Evaluation.**

5 The resource inventory and effects evaluation shall be sufficient to identify and quantify
6 the short-term and long-term effects of the proposed renewable energy facility
7 development on the affected marine resources and uses.

8
9 **b. Purpose of the Effects Evaluation**

10 The purpose of the effects evaluation is to determine whether the proposed actions can
11 meet the policies and standards for the protection of resources, resource users and
12 coastal communities referred to above in subsection A.2, Policies. The evaluation will
13 help identify where the applicant needs to address deficiencies. Results of the
14 evaluation will be used by the authorizing agency to develop specific measures for
15 environmental protection and mitigation, measures to protect ocean uses, monitoring,
16 and adaptive management.

17
18 **c. Use of Available Environmental Information.**

19 Regulating agencies may allow the use of existing data and information from any
20 source when complying with the requirements for resource inventory and effects
21 evaluation. All data and information used for the inventory and evaluation, including
22 existing data from federal environmental impact statements or assessments, shall meet
23 the same standards of adequacy required for the inventory and the evaluation.

24
25
26 **d. Inventory Content**

27 Regulating agencies shall request that the following factors be considered for inclusion
28 in the inventory to evaluate the magnitude of the proposed project, the likelihood of the
29 effects of the project, and the significance of the resources and uses that may be affected
30 by the project:

- 31
32 1) Proposed factors associated with the development, placement, operation, and
33 decommissioning of the project:
34 A) Location (using maps, charts, descriptions, etc.);
35 B) Numbers and sizes of equipment, structures;
36 C) Methods, techniques, activities to be used;
37 D) Transportation and transmission systems needed for service and support;
38 E) Materials to be disposed of and method of disposal;
39 F) Physical and chemical properties of hazardous materials, if any, to be used or
40 produced;
41 G) Navigation aids; and
42 H) Proposed time schedule.
- 43
44 2) Location and description of all affected areas, including, but not limited to:
45 A) Site of the renewable energy facility;
46 B) Adjacent areas that may be affected by physical changes in currents and
47 waves caused by the facility;
48 C) Utility corridor transiting territorial sea and ocean shore; and

- 1 D) Shoreland facilities
- 2
- 3 3) Physical and chemical conditions including, but not limited to:
- 4 A) Water depth;
- 5 B) Wave regime;
- 6 C) Current velocities;
- 7 D) Dispersal, horizontal transport, and vertical mixing characteristics;
- 8 E) Meteorological conditions; and
- 9 F) Water quality.
- 10
- 11 4) Bathymetry (bottom topography) and Shoreline Topography (LIDAR)
- 12
- 13
- 14 5) Geologic structure, including, but not limited to:
- 15 A) geologic hazards, such as faults or landslides of both marine and shoreline
- 16 facility areas;
- 17 B) mineral deposits;
- 18 C) seafloor substrate type, and;
- 19 D) hydrocarbon resources.
- 20
- 21 6) Biological features, including, but not limited to:
- 22 A) Critical marine habitats (see Definitions);
- 23 B) Other marine habitats;
- 24 C) Fish and shellfish stocks and other biologically important species;
- 25 D) Recreationally or commercially important finfish or shellfish species;
- 26 E) Planktonic and benthic flora and fauna;
- 27 F) Other elements important to the marine ecosystem; and
- 28 G) Marine species migration routes.
- 29
- 30 7) Cultural, economic, and social uses affected by the project including, but not
- 31 limited to:
- 32 A) Commercial and sport fishing;
- 33 B) State or Federally protected areas;
- 34 C) Scientific research;
- 35 D) Ports, navigation, and Dredge Material Disposal sites;
- 36 E) Recreation;
- 37 F) Coastal Communities Economy;
- 38 G) Aquaculture;
- 39 H) Waste discharge;
- 40 I) Utility or pipeline corridors and transmission lines;
- 41 J) Military Uses; and
- 42 K) Aesthetic Resources.
- 43
- 44 8) Significant historical, cultural or archeological resources.
- 45
- 46 9) Other data as determined to be necessary and appropriate to evaluate the effects
- 47 of the proposed project by the regulating agencies.
- 48

1
2 **e. Written Evaluation.**

3 Regulating agencies shall require the applicant to submit a written evaluation of all the
4 reasonably foreseeable adverse effects associated with the development, placement,
5 operation, and decommissioning of the proposed renewable energy facility. For
6 purposes of the evaluation, the determination of "reasonably foreseeable adverse
7 effects" shall be based on scientific evidence. The evaluation shall describe the
8 potential short-term and long-term effects of the proposed renewable energy facility on
9 marine resources and uses of the territorial sea, continental shelf, onshore areas and
10 coastal communities based on the inventory data listed above and the following
11 considerations:

12
13 1) Biological and Ecological Effects:

14 Biological and ecological effects include those on critical marine habitats and other
15 habitats, and on the species those habitats support. The evaluation will determine the
16 probability of exposure and the magnitude of exposure and response, as well as the
17 level of confidence (or uncertainty) in those determinations. The evaluation need not
18 discuss highly speculative consequences. However, the evaluation will discuss
19 catastrophic environmental effects of low probability. Factors to consider include,
20 but are not limited to:

- 21
22 A) The time frames/periods over which the effects will occur;
23 B) The maintenance of ecosystem structure, biological productivity, biological
24 diversity, and representative species assemblages;
25 C) Maintaining populations of threatened, endangered, or sensitive species;
26 D) Vulnerability of the species, population, community, or the habitat to the
27 proposed actions; and
28 E) The probability of exposure of biological communities and habitats to
29 adverse effects from operating procedures or accidents.
30

31 2) Current Uses:

32 Evaluate the effects of the project on current uses and the continuation of a current
33 use of ocean resources such as fishing, recreation, navigation, port activities.
34 Factors to consider include, but are not limited to:

- 35
36 A) Local and regional economies;
37 B) Archeological and historical resources; and
38 C) Transportation safety and navigation
39

40 3) Geologic Hazards

41 Evaluate the potential risk to the facility, in terms of its vulnerability to certain
42 hazards and the probability that those hazards may cause it damage or interrupt
43 operation. Consider both the severity of the hazard and the level of exposure it
44 poses to the facility or its operation. Hazards to be considered should include the
45 scouring action of currents on the foundations and anchoring structures, slope
46 failures and subsurface landslides, faulting, tsunamis, and variable or irregular
47 bottom topography.
48

1 4) Cumulative Effects

2 Evaluate the cumulative effects of a project, including the shoreland component, in
3 conjunction with effects of past projects, other current projects, and probable future
4 projects.¹⁰ The report should extrapolate the biological, ecological, physical, and
5 socioeconomic effects of the renewable energy facility development to those of
6 other renewable energy facility projects along the Oregon coast, while also taking
7 into account the effects of existing and future human activities and the regional
8 effects of global climate change.

9 A) In conducting the cumulative effects analysis, the applicant should focus on
10 the specific resources and ecological components, as detailed under subsection
11 4.d above, that may be affected by the incremental effects of the proposed
12 project and other projects in the same geographic area. The evaluation should
13 consider whether:

- 14 1) the resource is especially vulnerable to incremental effects;
15 2) the proposed project is one of several similar projects in the same
16 geographic area;
17 3) other developments in the area have similar effects on the resource;
18 4) these effects have been historically significant for this resource; and
19 5) other analyses in the area have identified a cumulative effects concern.
20

21 B) The Joint Agency Review Team may determine the scope of the cumulative
22 effects analysis that are required for phased development projects as described
23 below under subsections f.3 and section C.1. The cumulative effects analysis
24 conducted at each phase of a development is intended to inform the design,
25 installation and operation of successive phases. The JART will make the
26 determination based on the location, scale, scope and technology of the phased
27 development project, and other any other factors it determines to be relevant.
28

29
30 **f. Insufficient/Incomplete Information**

31 An applicant may not be able to obtain or provide the information required by
32 subsection B.4 above due to the lack of data available about the effect that the proposed
33 development may have on environmental resources and uses. When a regulating
34 agency determines that the information provided by the applicant is not sufficient or
35 complete enough to fulfill the requirements of subsection B.4,¹¹ the agency has the
36 following options:

¹⁰ National Environmental Policy Act (NEPA), defining “cumulative effects” as: “the impact on the environment encompassing the environmental (ecology, biology, physical) parameters and human dimension (economic, social, etc.) which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions (40 CFR § 1508.7).”

¹¹ One measure of whether the information provided by an applicant is sufficient are the federal consistency regulations under § 15 CFR 930.58 Necessary data and information (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification.

1
2 1) Agency Discretion

3 The regulating agency may terminate the decision-making process or suspend the
4 process until the applicant provides the information.
5

6 2) Pilot Project

7 The regulating agency may recommend that an applicant conduct a pilot project to
8 obtain adequate information and data and measure the effects. Pilot projects are
9 renewable energy facility developments which are removable or able to be shut
10 down quickly, are not located in sensitive areas, and are for the purpose of testing
11 new technologies or locating appropriate sites.¹² The agency's decision to allow the
12 use of a pilot project is for the purpose of obtaining the data and information
13 necessary to fulfill the requirements of subsection B.4., and shall be based on the
14 following approval criteria:
15

16 A) The exclusive purpose of the pilot project shall be to provide information on
17 the performance, structural integrity, design and environmental effects of a
18 specific renewable energy technology or its supporting equipment and
19 structures.

20 B) Adequate inventories of baseline conditions, as required by subsection 4(d)
21 above, shall be completed by the applicant prior to conducting the pilot project.

22 C) The risk of adverse effects from the pilot project shall be insignificant,
23 because:

- 24
- 25 1. of low probability of exposure of biological communities and habitats; or
 - 26 2. of low sensitivity of the biological communities and habitats to the
27 exposure;
 - 28 3. or the effects of exposure to sensitive communities and habitats will be
29 insignificant.
- 30

31 D) The pilot project shall not adversely affect any "critical marine habitat" (see
32 Appendix A: Glossary of Terms).
33

34 E) The pilot project will have a term, not to exceed five years, and authorization
35 for the project will include a standard condition requiring project alteration or
36 shutdown in the event that there was an unacceptable level of environmental
37 effect.
38

¹² [Pilot Project has the same meaning as prescribed under the Department of State Lands Rules Governing the Placement of Ocean Energy Conversion Devices on, in, or over state-owned land within the Territorial Sea in OAR 141-140-0020 \(7\) "Demonstration Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, installation, operation, or removal of an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.](#)

1 F) The pilot project shall avoid significant or long-term interference with other
2 human uses of marine resources, and will require decommissioning and site
3 restoration at expiration of the authorization period if federal and state
4 authorization for a commercial renewable energy facility is not sought.

5
6 G) All data shall be in the public domain subject to ORS 192.410 et seq.
7

8 H) Work Plan: The applicant shall provide a written work plan which will
9 include, but not be limited to the following:¹³

- 10
11 1. A list of the information needed to satisfy the requirements of subsection
12 B.4. above.
13 2. Specific pilot project objectives to obtain the needed information and an
14 explanation of how the study or test design will meet the objectives.
15 3. Description of study or test methods to meet the objectives, such as:
16 (a) Literature review;
17 (b) Collection of any needed baseline data;
18 (c) Hypotheses to address the study objectives;
19 (d) Descriptions of field sampling and data-analyses methods to be
20 used; and
21 (e) Use of adequate controls to allow the effects of the proposed
22 action to be separated from natural fluctuations in resources and habitats.
23
24 4. Supporting documentation demonstrating that the study design is
25 scientifically appropriate and statistically adequate to address the research
26 objectives.
27
28 5. Descriptions of how the data and analyses will be reported and delivered
29 to the authorizing state agency for review and approval.
30

31 3) Phased Development

32 The regulating agency may recommend that an applicant conduct a project as a
33 phased development in order to obtain adequate information and data and measure
34 the effects. Phased development projects are renewable energy facility
35 developments which are limited in scale and area, but are designed to be produce
36 energy for commercial use. The applicant for a phased development project will
37 need to comply with the requirements of subsection B.4. The agency's decision to
38 allow the use of a phased development project is designed to allow for commercial
39 energy production while obtaining certain data and information that are necessary to
40 fulfill the requirements of subsection B.4., but can only be obtained through the
41 monitoring and study of the effects of the development as it is installed and operated
42 for a discrete period of time.
43

¹³ Pilot projects that are authorized under the standards and conditions of this subsection f (2) are not required to fulfill the requirements of Section C below. The standards and requirements of Section C will apply to an application for authorization to expand the pilot project from a short-term limited scope facility to a commercial operation scale facility.

1 **g. Test Facility**

2 Applications for a permit, license, or other authorization for the installation and use of
3 an experimental or test device at the Northwest National Marine Renewable Energy
4 Center Mobile Test Berth Site zone, are not subject to the requirements of Section B.
5 See Section D: Northwest National Marine Renewable Energy Center Mobile Test
6 Berth Site, below, for the specific requirements for the use of these facilities.
7
8

9
10 **C. Operation Plan Development**

11 The regulating agency shall require an operation plan to be prepared as a condition of approval
12 for a state or federal permit, license, lease or other authorization for renewable energy facility
13 development. The operation plan should explain the procedures and mechanisms that will be
14 employed by the operator so that the facility will comply with regulatory standards and other
15 conditions of permit or license approval related to water and air quality, adverse environmental
16 effects, maintenance and safety, operational failure and incident reporting. The operation plan
17 shall be designed to prevent or mitigate harm or damage to the marine and coastal environment
18 and at a minimum shall include the following information.
19

20 **1. Phased Development Plan**

21 The regulating agency may require that a facility be developed in phases in order to
22 determine whether the environmental effects of the structures and the operation of the
23 facility are consistent with the inventory and effects evaluation conducted under subsection
24 B.4. The requirements for an operation plan listed in this subsection would apply to each
25 stage of the phased development so as to account for any changes in design, technology or
26 operation that may result from monitoring the initial phase of the operation. The state and
27 federal joint agency review team will assist the developer in assessing the environmental
28 effects of the initial phase and in determining what, if any, changes in the development and
29 operation of future phases of the facility might be necessary to mitigate or prevent harm or
30 damage to the marine ecosystem.
31

32 A facility that has been developed to the full extent of its design and operating capacity
33 may, during the lifetime of its authorization, require systematic improvements to the
34 technology, structures and operational procedures that were originally authorized. The
35 regulating agency will require a new facility development plan, as appropriate and
36 necessary, to provide the data and information for the redevelopment and operation of the
37 new facility components.
38

39 **2. Facility Development Plan**

40 A plan is required that describes the physical and operational components of the proposed
41 facility and must contain, at minimum, detailed technical information, data, protocols and
42 references for:
43

- 44 **a.** Structural and project design, fabrication, anchoring and installation information;
- 45 **b.** All cables and pipelines, including lines on project easements;
- 46 **c.** A description of the deployment activities;
- 47 **d.** A listing of chemical products used;

- e. A description of vessels, vehicles, aircraft and the transit lanes that will be used;
- f. A general description of the operating procedures and systems;
- g. Construction schedule; and
- h. Other information as required by the Department of State Lands.

3. Project Operation Plan

The operation plan is required that describes, at a minimum, information regarding the routine environmental monitoring, safety management and emergency response procedures, facility inspections, and the decommissioning of the project. The operation plan should explain the procedures and mechanisms that will be employed so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, environmental protection and mitigation, facility maintenance and safety, operational failure and incident reporting. An operation plan will include the following information:

a. Contingency Plan:

A plan is required to describe how the facility operator will respond to emergencies caused by a structural or equipment failure due to human error, weather, geologic or other natural event. The plan should include a description of the types of equipment, vessels and personnel that would be deployed, the chain of command or management structure for managing the facility repairs, recovery or other forms of remedial action, and the process and timeline for notification of state and federal authorities.

b. Inspection Plan:

A plan is required to provide for the implementation of a routine inspection program to ensure the mechanical, structural and operational integrity of renewable energy project facilities and other related structures, equipment or facilities. In addition, unscheduled inspections are to be required after any major geological or meteorological event to ensure continued operational safety and environmental protection.

c. Monitoring Plan:

A plan is required to provide for the implementation of a routine standardized monitoring program for potential impacts on specific resources as specified by the resource inventory and effects evaluation. The operator is required to monitor activities related to the operation of the facility and demonstrate that its performance satisfies specified standards in its approved plans. Monitoring shall be sufficient to understand the short-term and long-term effects of the actions on the affected resources and uses. Plans for monitoring must include, at a minimum:

- 1) A list of the information needed to satisfy an effects evaluation.
- 2) Specific study objectives to obtain the needed information and explanation of how the study design will meet the objectives.
- 3) Description of study methods to meet the objectives, such as:
 - A) Literature review;

- B) Collection of needed baseline data;
- C) Hypotheses to address the study objectives;
- D) Descriptions of field sampling and data-analyses methods to be used; and
- E) Use of adequate controls, such as control sites, to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.

4) The monitoring plan will include supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.¹⁴

5) The monitoring plan will include a description of the method that will be used to report and deliver data and analyses information to the authorizing state agency for review in a timely and efficient manner.¹⁵

d. Adaptive Management Plan

An adaptive management plan is required to provide a mechanism for incorporating new findings and new technologies into the operation and management of the project. The adaptive management plan shall include performance standards that are based on results of the resource inventory and effects evaluation and incorporated in the study design of the monitoring plan as described in subsection 2 (c.) above. Processes for how adaptation measures are applied to the operation of the project will be explained in the plan. When the monitoring results show that the performance standards are not being met due to the operation of the facility, adaptation measures designed to bring the operation into compliance with the performance standard will be applied to the operation of the project. Processes for how adaptation measures will be applied to the operation and management of the project will be explained in the adaptive management plan. The adaptive management plan should account for:

- 1) Variable conditions in the marine environment;
- 2) Change in the status of resources;
- 3) New information provided by monitoring of the project;
- 4) Data and information provided by research and from other sources;
- 5) New technologies that would provide for greater protection of ocean resources;
- 6) Ocean fisheries, or other ocean uses from adverse effects and operational conflicts; and
- 7) Unanticipated cumulative effects.

¹⁴ Standardized monitoring protocols would result in data sets that are comparable and transferable among sites and technologies. The protocols would include a Before, After, Control, Impact (BACI) experimental study design.

¹⁵ Example: the data and analysis will be applied to determine if conditions meet the standard established under the Oregon Department of Environmental Quality Biocriteria OAR 340-041-0011, as; Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.

1
2 **4. Decommissioning Plan:**

3 An applicant is required to provide a plan describing the facilities to be removed.¹⁶ The
4 plan should include; a proposed decommissioning schedule; a description of removal and
5 containment methods; description of site clearance activities; plans for transporting and
6 disposing of the removed facilities; a description of those resources, conditions, and
7 activities that could be affected by or could affect the proposed decommissioning activities;
8 results of any recent biological surveys conducted in the vicinity of the structure and recent
9 observations of marine mammals at the structure site; mitigation measures to protect
10 archaeological and sensitive biological features during removal activities; and a statement
11 as to the methods that will be used to survey the area after removal to determine any effects
12 on marine life. A decommissioning plan should identify how the site will be restored to the
13 natural condition that existed prior to the development of the site, to the extent practicable.
14

15
16 **5. Financial Assurance Plan:**

17 The applicant must provide a financial assurance compliance plan that describes their
18 ability to comply with the state regulating agency requirements for financial assurance
19 instruments to guarantee performance, and any other financial terms and conditions that
20 may be applied. Wave energy facilities or devices shall comply with the requirements of
21 ORS 274.867 Wave energy; financial assurance; rules,¹⁷ and any administrative rules issued
22 by the Department of State Lands under [OAR 141-140-0080](#) and [OAR 141-140-0090](#) to
23 implement this statutory authority.

¹⁶ [The requirement for a decommissioning plan is based upon, and will be applied by, the Department of State Lands under OAR 141-140-0080\(5\)\(e\) Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal. The decommissioning of the transmission cable is required under 141-083-0850 Cable Easement Terms and Conditions \(6\) If determined necessary by the Division in consultation with the easement holder and other interested parties, and if permitted by the applicable federal agency\(ies\) regulating the cable, the easement holder shall remove the cable from the state-owned submerged and submersible land within one \(1\) year following the termination of use of the cable or expiration of the easement.](#)

¹⁷ [\(2\) Unless exempted under rules adopted by the director under this section, an owner or operator of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:](#)

[\(a\) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in Oregon's territorial sea, of the facility or device; and](#)

[\(b\) Any corrective action required to be taken at the site of the facility or device.](#)

[\(3\) The financial assurance requirements established by subsection \(2\) of this section may be satisfied by any one or a combination of the following:](#)

[\(a\) Insurance;](#)

[\(b\) Establishment of a trust fund;](#)

[\(c\) A surety bond;](#)

[\(d\) A letter of credit;](#)

[\(e\) Qualification as a self-insurer; or](#)

[\(f\) Any other method set forth in rules adopted by the director.](#)

1
2
3 **6. Agreements:**

4 Applicants are required to communicate with traditional ocean users and stakeholders with
5 an interest in the area of the proposed project to address issues of concern.¹⁸ Applicants are
6 encouraged to memorialize agreements with those ocean users and stakeholders on the
7 specific actions that will be taken by the applicant to address their issues of concern.
8

9
10 **D. Northwest National Marine Renewable Energy Center Mobile**
11 **Test Berth Site**

12
13 **1. Test Berth Site Plan**

14 The Northwest National Marine Renewable Energy Center has obtained the required
15 permits, lease, and authorizations to conduct short-term experimental testing of renewable
16 energy technologies at the test berth site located at the “test zone”.
17

18 **2. Test Berth Site Use**

19 Applications for a permit, license, or other authorization for the installation and use of an
20 experimental or test device at the Northwest National Marine Renewable Energy Center
21 Mobile Test Berth Site zone, are not subject to the requirements of Section B. above.
22
23

¹⁸ [The Department of State Lands rules under 141-140-0040 Pre-Application Requirements. Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with: \(a\) Department staff to discuss the proposed project; and \(b\) Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility. Stat. Auth.: ORS 183, ORS 273 Stats. Implemented: ORS 591.](#)

Appendix B: Definitions and Terms

The following terms or phrases used in this section apply the definitions that are given them in the Territorial Sea Plan as amended in 2000, Goal 19 Ocean Resources, or by Oregon Administrative Rule or Oregon Revised Statute.

Important marine habitat: (Goal 19) are areas and associated biologic communities that are:

- a.) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; or
- b.) needed to assure the survival of threatened or endangered species; or
- c.) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; or
- d.) essential to the life-history or behaviors of marine organisms; or
- e.) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or
- f.) unique or of limited range within the state.

Areas important to fisheries: (Goal 19)

- a.) areas of high catch (e.g., high total pounds landed and high value of landed catch); or
- b.) areas where highly valued fish are caught even if in low abundance or by few fishers; or
- c.) areas that are important on a seasonal basis; or
- d.) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or
- e.) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.

conservation: a principle of action guiding Oregon's ocean-resources management, which seeks to protect the integrity of marine ecosystems while giving priority to the protection and wise use of renewable resources over nonrenewable; as used in the Oregon Ocean Resources Management Plan, the act of conservation means "that the integrity, diversity, stability, complexity, and the productivity of marine biological communities and their habitats are maintained or, where necessary, restored" and "...accommodat(ing) the needs for economic development while avoiding wasteful uses and maintaining future availability. (Territorial Sea Plan Appendix A: Glossary of Terms)

critical marine habitat: means one or more of the following land and water areas:

- a.) areas designated as "critical habitat" in accordance with federal laws governing threatened and endangered species; OR
- b.) areas designated in the Territorial Sea Plan as either:
 - 1.) as needed for the survival of animal or plant species listed by state or federal laws as "threatened", "endangered", or "sensitive". Such areas might include special areas used for feeding, mating, breeding/spawning, nurseries, parental foraging, overwintering, or haul out or resting. This is not intended to limit the application of federal law regarding threatened and endangered species; OR

1 2.) "unique" (i.e. one of a kind in Oregon) habitat for scientific research or education
2 within the Oregon territorial sea. (Territorial Sea Plan, Part Two)

3
4 **ecosystem:** the living and non-living components of the environment which interact or function
5 together, including plant and animal organisms, the physical environment, and the energy
6 systems in which they exist. All the components of an ecosystem are interrelated. (Oregon
7 Statewide Planning Goals)

8
9 **habitat:** the environment in which an organism, species, or community lives. Just as humans
10 live in houses, within neighborhoods, within a town or geographic area, within a certain region,
11 and so on, marine organisms live in habitats which may be referred to at different scales. (see
12 also "critical marine habitat", "important marine habitat") (Territorial Sea Plan Appendix A:
13 Glossary of Terms)

14
15 **important marine habitat:** marine habitats that must be specifically considered when an
16 inventory-and-effects evaluation is conducted pursuant to Goal 19: including but not limited to:
17 habitat necessary for the survival and conservation of Oregon renewable resources (e.g. areas
18 for spawning, rearing, or feeding), kelp and other algae beds, seagrass beds, seafloor gravel
19 beds, rock reef areas and areas of important fish, shellfish and invertebrate concentration.
20 (Oregon Statewide Planning Goal 19).
21

DRAFT