

TERRITORIAL SEA PLAN

PART 1: OCEAN MANAGEMENT FRAMEWORK

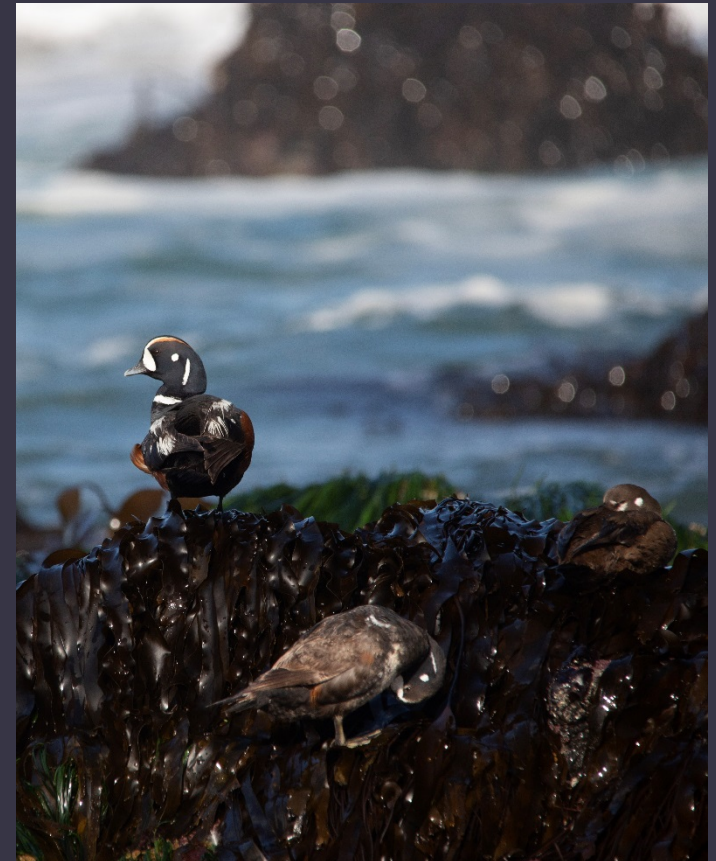
OPAC MEETING, SEPTEMBER 20TH 2018

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PART ONE: OCEAN MANAGEMENT FRAMEWORK

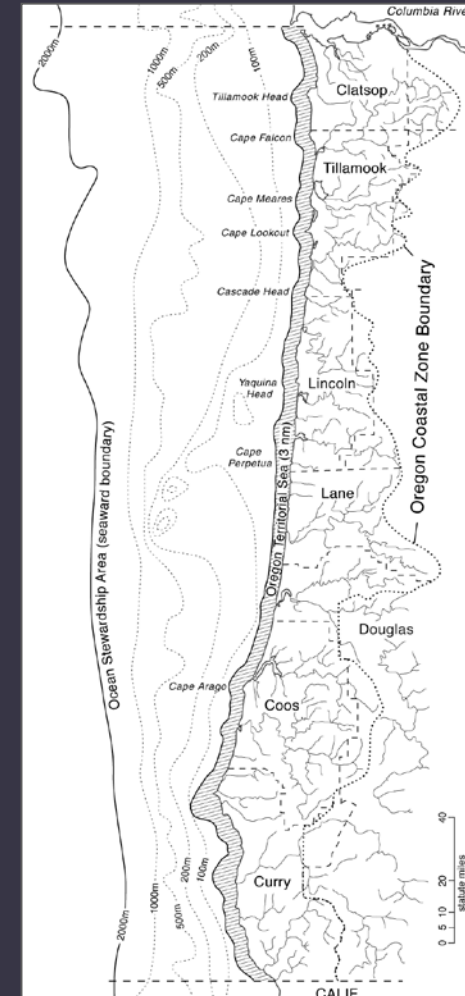
- A. History of Ocean Planning in Oregon
- B. The Ocean Policy Advisory Council
- C. Oregon's Territorial Sea
- D. Laws and Other Legal Authorities Affecting Ocean Management
- E. Ocean Management Agencies
- F. Plan Implementation
- G. Ocean Management Goals and Policies



OREGON OCEAN MANAGEMENT

Focusing events and threats: impetus' for policy action

- OCS oil-gas leasing proposal (1978)
- OCS mineral leasing proposal on Gorda Ridge and task force (1983)
- OCS leasing moratorium (1989)
- Placer mineral leasing proposals (1990)
- Rocky shores disturbance-overuse (1994)
- Cable crossings (2000)
- Continued marine fisheries decline and Marine Sanctuary protected area proposals (2002)
- Legislation to restructure ocean management (2003)
- [Marine Reserves Policy and Recommendations \(2008 – 2012\)](#)
- [Marine Renewable Energy \(2008-2018\)](#)



A. HISTORY OF OCEAN PLANNING IN OREGON



Historical Roots of Oregon's Territorial Sea Plan

Before 1973

"Beach Bill" & O.C.C. & D.C.

- public access to beaches
- coastal protection
- coastal conservation

1973 - 1987

ORS 197 Oregon Land Use Program

- Statewide Planning Goals 1 - 19
- Local Planning Programs
- State Agency Programs

1987 - 1991

ORS 196 Creates Ocean Task Force to Develop Ocean Plan

- Ocean Stewardship Area
- Marine Habitat Protection
- Ocean Resources Policies
- Territorial Sea Plan Needed
- Ocean Policy Advisory Council

1991 - 1994

ORS 196 Amended:

- Creates Ocean Policy Advisory Council
- Initial Territorial Sea Plan Prepared

Future: 1994 ?

- Territorial Sea Plan Additions and Amendments

B. THE OCEAN POLICY ADVISORY COUNCIL

- 1. Membership ([ORS 196.438](#))
- 2. Planning Process
 - A. Council Process
 - B. Planning Considerations
 - C. A Short List
 - D. The “Initial” Territorial Sea Plan
 - E. The Territorial Sea Plan and Ocean Fisheries

The Short List

- Administrative Rules for Statewide Planning Goal 19, Ocean Resources
- Marine Birds and Mammals Habitat Areas (Rocks and Reefs)
- Intertidal Areas (Marine Gardens)
- Oil Spill Response
- Marine Water and Air Quality
- Leases for Marine Plants and Animals
- Artificial Reefs
- Recreation and Cultural Resources
- Dredged Materials Disposal
- Marine Minerals
- Overall Policies (Stewardship, Conservation, Habitat Protection)
- Oil and Gas Development
- Littoral Cell Management (Coastal Hazards)
- Beaches and Dunes

“Rocky Shores”

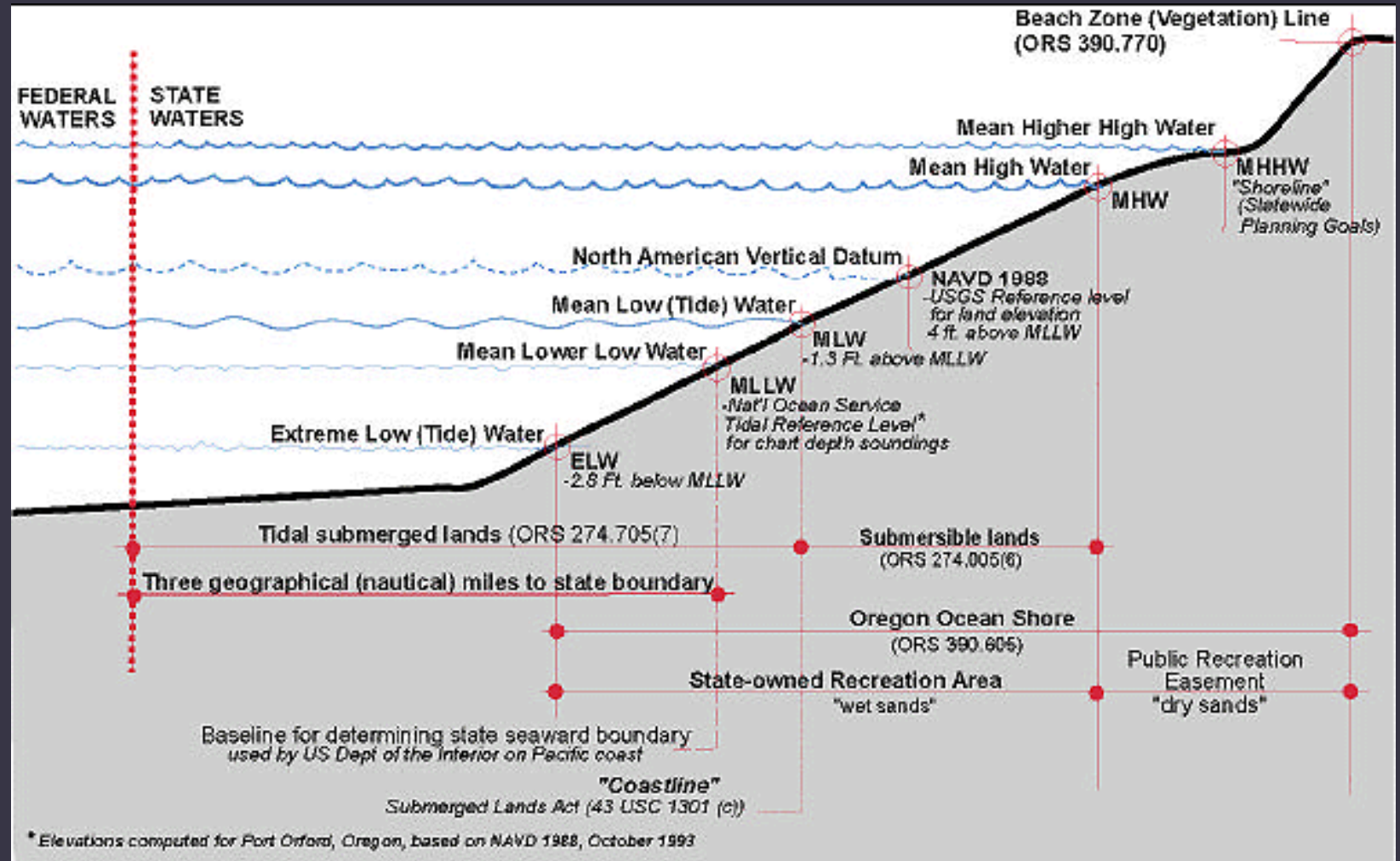
C. OREGON'S TERRITORIAL SEA

- 1. Oregon's Seaward Boundary
- 2. Ocean Shore



OCEAN MANAGEMENT BOUNDARY LINES

This diagram shows the intersection of the ocean shore with the height of each of six different levels of ocean water described in various state or federal authorities used as reference lines to determine various jurisdictional boundaries. The Oregon Department of State Lands uses "mean" (average) high water in place of "ordinary" high water to determine the upper boundary of tidal submersible lands (authorized in ORS 274.015).



D. LAWS AND OTHER LEGAL AUTHORITIES

- Various state and federal agencies carry out many different laws that have been enacted over the years to govern the resources and activities in Oregon's ocean area.
- Bringing all these laws and programs together in a coordinated management framework is the task of the Ocean Policy Advisory Council through this Territorial Sea Plan.
- These laws are briefly described, followed by a discussion of the hierarchy among them.
- Although this section is intended to be complete, it is NOT a detailed or exhaustive listing of all agency programs and authorities.
 - 1. State Ocean Related Laws
 - 2. The Oregon Ocean Resources Management Plan
 - 3. Statewide Planning Goals
 - 4. Federal Ocean Related Laws

1. STATE OCEAN RELATED LAWS:

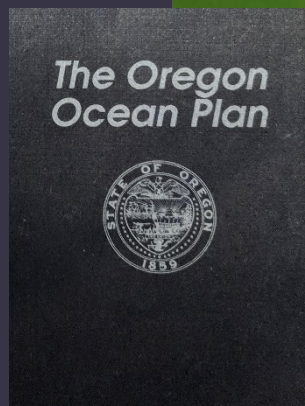
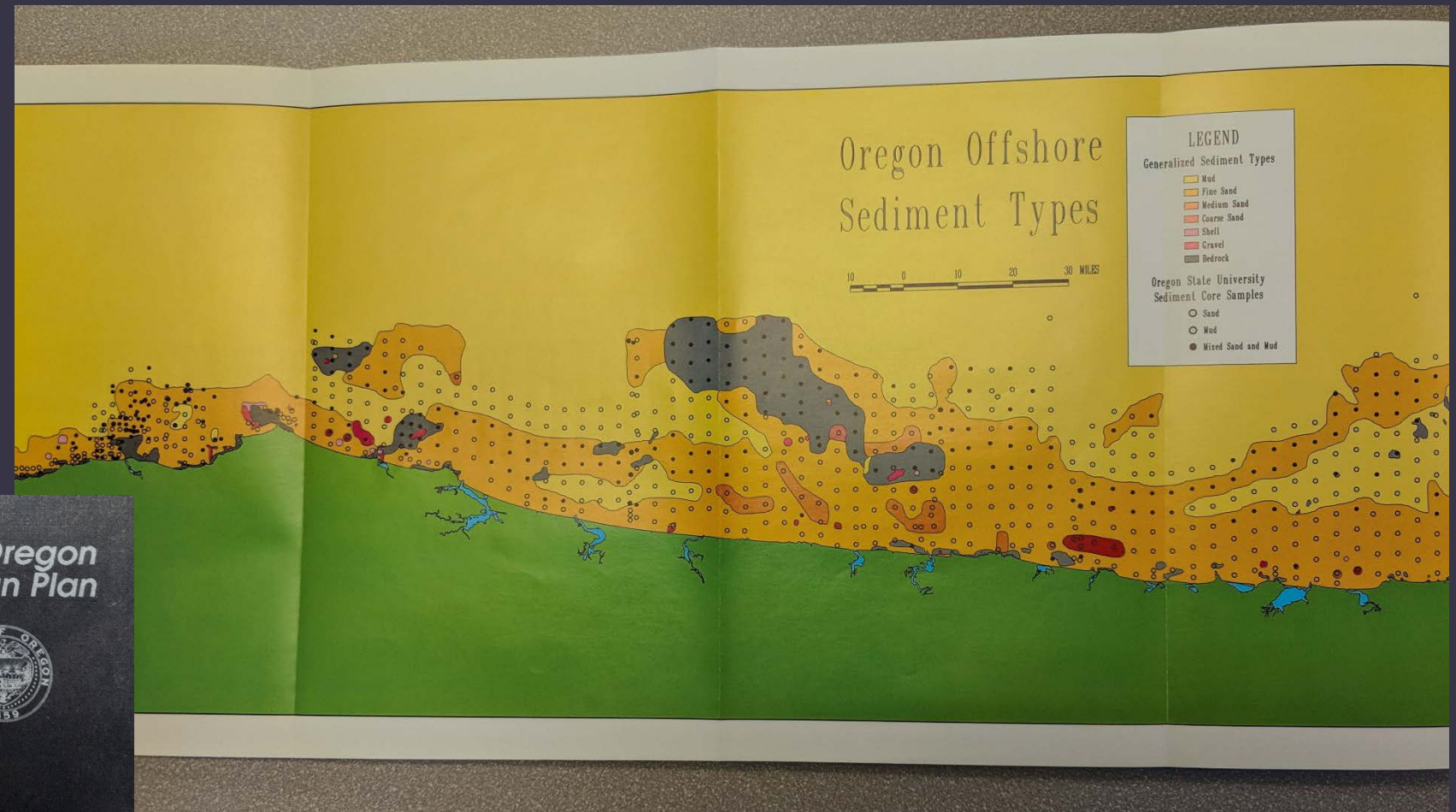
- a. Ocean Resources Management Act of 1987/1991 (ORS 196.405 et seq)
- b. Statewide Land Use Planning (ORS 197.005 et seq)
- c. Ocean Shores (Beach Bill) (ORS 390.605 et seq)
- d. Submerged/Submersible Lands (ORS 274.005 et seq)
- e. Fish and Wildlife Laws (ORS 496 et seq)
- f. Commercial Fishing (ORS 506.001-.405) and Developmental Fisheries (ORS 506.450-.465)
- g. Kelp Leasing (ORS 274.885 et seq)
- h. Threatened or Endangered Wildlife Species (ORS 496.172 et seq)
- i. Marine Water Quality (ORS 468)
- j. Oil Spill Contingency Planning (ORS 468B.300)

2. THE OREGON OCEAN RESOURCES MANAGEMENT PLAN

A. status and scope (of the Ocean Plan)

B. Principal Policies

C. Application to the TSP



3. STATEWIDE PLANNING GOALS



Coastal shorelands are defined as lands within 100 feet of the ocean shore as well as other lands around estuaries and coastal streams.

Goal 17 – Coastal Shorelands

The Shorelands Goal aims to:

"...conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands..."

while recognizing the diverse contributions that shorelands make such as:

- protecting and maintaining water quality
- providing fish and wildlife habitat
- siting water-dependent uses for economic development
- providing recreational opportunities
- and the aesthetic or scenic qualities that define the coastal environment.

The goal requires that "management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters."

3. STATEWIDE PLANNING GOALS



The Ocean Resources Goal was adopted in 1977 and amended for the first time in 2000. The goal establishes that Oregon's primary ocean policy objectives are long term conservation-oriented the proper management of renewable resources is a top priority.

Goal 19 – Ocean Resources

The revised goal requires that:

"...all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources-- i.e., living marine organisms--than to the development of non-renewable ocean resources."

The revised goal clarifies the original requirement that agency decisions be based on information by specific reference to the requirements in the Territorial Sea Plan for resource inventory and effects evaluation:

"Prior to taking an action that is likely to affect ocean resources or uses of Oregon's territorial sea, state and federal agencies shall assess the reasonably foreseeable adverse effects of the action as required in the Oregon Territorial Sea Plan."

And the revised goal also provides specific criteria, including definitions of important marine habitat and important fishery areas for evaluating whether an action complies with the goal.

4. FEDERAL OCEAN RELATED LAWS

- a. Clean Water Act (33 USC 1251 - 1375) amended
- b. Coastal Zone Management Act (16 USC 1451 - 1464), amended
- c. Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 USC 9601 - 9657)
- d. Endangered Species Act of 1973 (16 USC 1531 - 1543)
- e. Fish and Wildlife Act of 1956 (16 USC 742a - 742j-2)
- f. Magnuson Fisheries Conservation and Management Act (16 USC 1801 - 1882)
- g. Marine Mammal Protection Act (16 USC 1361 - 1407)
- h. Marine Plastics Pollution Research and Control Act of 1987
- i. Marine Protection, Research and Sanctuaries Act (16 USC 1431 - 1434)
- j. Migratory Bird Conservation Act of 1929 (16 USC 715 - 715r)
- k. Migratory Bird Treaty Act of 1918 (16 USC 703 - 712) as
- l. National Environmental Policy Act (42 USC 4321-4347)
- m. National Wildlife Refuge System Administration Act of 1966 (16 USC 668dd - 668ee) as amended
- n. Ocean Dumping Act (33 USC 1401 - 1445)
- o. Oil Pollution Act of 1990
- p. Rivers and Harbors Appropriation Act of 1899
- q. Submerged Lands Act (43 USC 1301 - 1315)
- r. Wilderness Act of 1964 (16 USC 1131 - 1136)
- s. Laws Creating National Wildlife Refuge and Wilderness off Oregon 's Coast

5. INTERNATIONAL LAW

States, in carrying out their governance authority for areas of the ocean under their jurisdiction, have a duty to comply with international law as part of U.S. law.

- The United States is a party to many international agreements related to the oceans, including the 1982 United Nations Convention on the Law of the Sea.
- Although the United States has yet acceded to the 1982 Convention because of objections to deep-seabed mineral provisions, the U.S. has been a party to all four of the 1958 Geneva Conventions on the Law of the Sea and generally recognizes as customary international law all provisions except for the deep-seabed provisions.

6. OREGON COAST INDIAN TRIBES

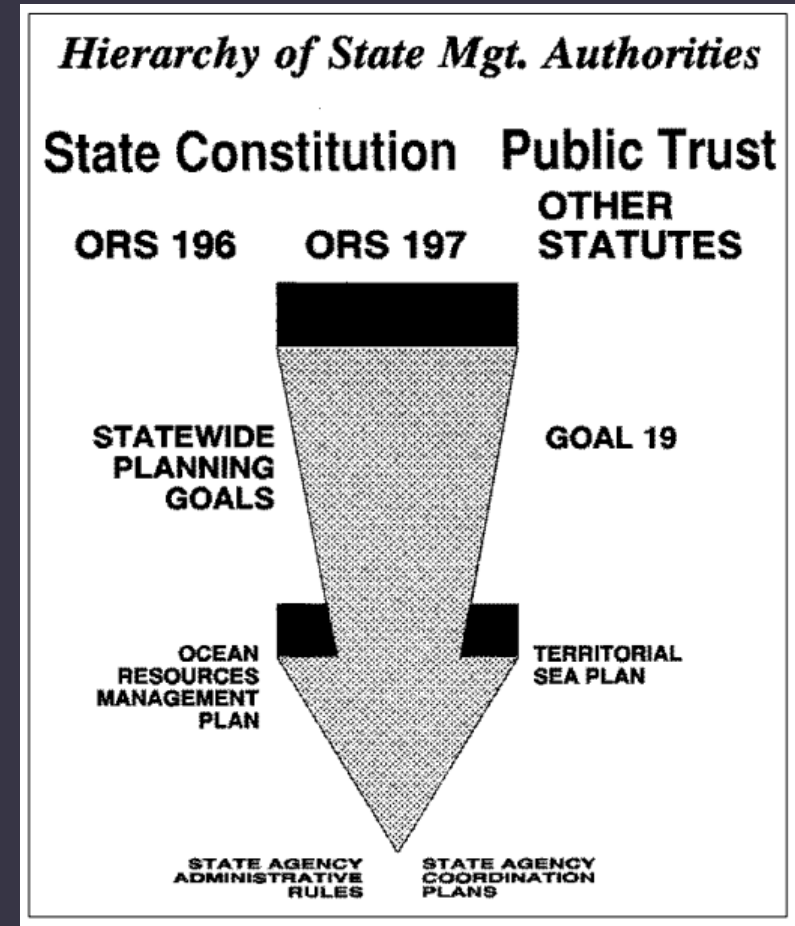
There are four federally-recognized tribes on the Oregon coast: the Confederated Tribes of the Grande Ronde; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw; the Coquille Tribe; and the Confederated Tribes of Siletz.

- While the federal restoration acts renewed the tribes' relationship with the federal government and renewed health and education benefits for tribal members, hunting or fishing rights were not restored to the tribes.
- Individual tribes have entered into agreement with the Department of Fish and Wildlife for special gathering permits based upon ceremonial and subsistence purposes.

7. HEIRARCHY OF LEGAL AUTHORITIES IN THE TERRITORIAL SEA

This section seeks to describe the linkage or relationship of these "laws" to each other. Listed in order, the general hierarchy is:

- a. State Constitution
- b. Common Law and the Public Trust
- c. State Law
- d. Statewide Planning Goals
- e. Ocean Plans
- f. Agency Rules and Programs



E. OCEAN MANAGEMENT AGENCIES

State Agencies:

- a. Department of Agriculture
- b. Department of Environmental Quality (DEQ)
- c. Department of Fish and Wildlife (ODFW)
- d. Department of Geology and Mineral Industries
- e. Department of Land Conservation and Development
- f. Oregon Parks and Recreation Department (OPRD)
- g. Department of State Lands (DSL)
- h. State Marine Board

Local Governments:

Cities

Counties

Coastal Port Districts

Federal Agencies:

- FEDERAL AGENCIES
- USFWS: U.S. Fish and Wildlife Service
- USEPA: U.S. Environmental Protection Agency
- USACOE: U.S. Army Corps of Engineers
- NMFS: National Marine Fisheries Service
- USBLM: U.S. Bureau of Land Management
- USCG: U.S. Coast Guard
- USFS: U.S. Forest Service
- FAA: Federal Aviation Authority
- **BOEM: Bureau of Ocean Energy Management**
- **FERC: Federal Energy Regulatory Commission**
- **BSEE: Bureau of Safety and Environmental Enforcement**

PART 1, SECTION F – PLAN IMPLEMENTATION

F. PLAN IMPLEMENTATION

1. How The Plan Works

- a. A Three-Part Plan
- b. Mandatory or Discretionary Provisions of the Plan
- c. Carrying Out The Mandatory and Recommended Provisions of the Plan
- d. Adoption and Approval of the Territorial Sea Plan
- e. Federal Approval

2. Changing the Plan

- a. Initiating an Amendment
- b. Issue Evaluation

- c. Work Program
- d. Public Participation
- e. Council Approval and Submittal to LCDC

3. Implementing the Plan: Legal Requirements

- a. Ocean Policy Advisory Council
- B. Local Governments

B. MANDATORY OR DISCRETIONARY PROVISIONS OF THE PLAN

- The Oregon Legislature clearly intended that the Territorial Sea Plan would have effect and directed that once the LCDC adopts the plan, state agencies must act consistently with it. Consequently, the plan was written to include sections that are explicitly mandatory and sections that are recommendations only. The provisions of the plan that are mandatory include:
 - 1.) all of Part Two: Making Resource Use Decisions; and
 - 2.) specific sections within Part Three: Rocky Shores Management Strategy:
 - B.1. Rocky Shores Policy Framework: Goal, Objectives, Policies;
 - C.1. Mandatory Policies for Site Management;
 - C.2. Mandatory Policies for Amending the Rocky Shores Strategy;
 - F.2. Management Categories G.1.-39. Site Designations & Management Prescriptions
- All other plan provisions are recommendations and therefore discretionary. The recommendations are intended to provide planning guidance and describe preferred, but not required, courses of action

D. ADOPTION AND APPROVAL OF THE TERRITORIAL SEA PLAN

- The Council first must recommend the plan for adoption to the Land Conservation and Development Commission.
- Then, LCDC must make findings that the Territorial Sea Plan:
 - -- carries out the policies of the Ocean Management Act;
 - -- is consistent with applicable statewide planning goals, with emphasis on the four coastal goals; and
 - -- is compatible with adjacent county comprehensive plans.

After making these findings, LCDC will adopt the Territorial Sea Plan and any subsequently proposed amendments, through rule making.

- If the LCDC cannot make the required findings, it cannot itself amend the Territorial Sea Plan. Instead, LCDC must send the plan back to the OPAC for additional work.

2. CHANGING THE PLAN –

A. INITIATING AN AMENDMENT

- There are two ways by which consideration of an amendment may reach the Council:
 - 1.) Issues Survey
 - After completing this initial plan or any future additions, the Council will survey issues remaining from the Ocean Resources Management Plan and new issues that have arisen. This survey will occur at approximately one-to three-year intervals depending on the length of time the Council requires to complete plan additions. This issues-survey is intended to be the primary method by which plan amendments are initiated.
 - 2.) Amendment Request
 - The Council will consider any written request for plan amendment in the same manner as those arising from the issues survey. The Council intends that the plan be as relevant and accurate as possible and recognizes that amendments to existing provisions will probably be necessary to facilitate implementation, provide more appropriate guidance to agencies, respond to public concerns, or meet changed conditions in the field. The written request may be from an interested party or from the Land Conservation and Development Commission pursuant to its rules for requesting that the Council consider work on an amendment.

2. CHANGING THE PLAN – CONTINUED.

- B. Issue Evaluation
 - The Council will weigh the circumstances of the issues surveyed or the requested amendment against the Planning Considerations for Council Action (see section I.B.2.b.) and other factors to determine whether the issue is appropriate for Council action and whether work load, staff resources, and other logistical factors will make it possible to undertake an evaluation of the issue.
- c. Work Program
 - If the Council agrees to address an issue, it will develop a work program that includes a schedule with a completion target date, public participation opportunities, any working groups or other necessary technical assistance.
- d. Public Participation
 - The Council will include opportunities for public review throughout the planning process including public workshops, from time to time, to solicit ideas and comments about needed Council action on issues or concerns.
- e. Council Approval and Submittal to LCDC
 - The Council will approve any plan amendments in the same manner as the initial plan and will

G. OCEAN MANAGEMENT GOALS AND POLICIES

The following goals and policies of the State of Oregon are mandatory for ocean resources planning and management; all actions by local, state, or federal agencies that affect the ocean resources of the state shall be consistent with them.

The overall ocean-management goal of the State of Oregon is to: conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

To achieve this goal, the State of Oregon will:

1. give higher priority to the protection of renewable marine resources than to the development of non-renewable ocean resources;
2. support development of ocean resources that is environmentally sound and economically beneficial to coastal communities and the state;
3. protect the diversity of marine life, the functions of the marine ecosystem, the diversity of marine and estuarine habitats, and the overall health of the marine environment; and
4. seek the conservation of ocean resources within the larger marine region that is of ecologic and economic interest to the State of Oregon.

POLICY 1: SCOPE OF AUTHORITY

It is the policy of the State of Oregon that all local, state, and federal plans, programs, and activities that affect the resources and uses of the Oregon territorial sea shall:

- A. be developed, managed, and conducted to maintain and, where appropriate, restore the long-term benefits derived from Oregon's renewable marine resources;
- B. meet the requirements of the Territorial Sea Plan for inventory information and effects-analysis;
- C. protect:
 1. renewable marine resources from adverse effects of development of nonrenewable resources;
 2. the biological diversity of marine life and the functional integrity of the marine-ecosystem;
 3. important marine habitat, including estuarine habitat;
 4. areas important to fisheries;
 5. beneficial uses of ocean resources, such as navigation, food production, recreation, and aesthetic enjoyment that do not adversely affect the resources to be protected in policy items 1-4, above.

POLICY 3: MANAGEMENT MEASURES

- A. It is the policy of the State of Oregon that management measures for ocean resources and uses shall be appropriate to the circumstances and provide flexibility for future actions. Such management measures include:
 - 1. Cumulative Effects Assessment:
 - 2. Adaptive Management
 - 3. Conditional Approvals or Actions:
 - 4. Special Management Area Plans:
 - 5. Intergovernmental Coordination and Cooperation
 - 6. Regional Cooperation and Governance:
 - 7. Public Involvement
 - 8. Contingency Plans
 - 9. Precautionary Approach
- B. It is the policy of the State of Oregon to prepare and regularly update a marine research strategy to provide a basis for identifying, funding, and coordinating marine research.

POLICY 4. OCEAN STEWARDSHIP AREA

- A. The State of Oregon has interests in the conservation of ocean resources in an Ocean Stewardship Area, an ocean area where natural phenomena and human uses can directly affect uses and resources of Oregon's territorial sea; the Ocean Stewardship Area includes the state's territorial sea, the continental margin seaward to the toe of the continental slope, and adjacent ocean areas;
- B. Within the Ocean Stewardship Area, the State of Oregon will:
 - 1. use all applicable state and federal laws to promote its interests in management and conservation of ocean resources within the state's Ocean Stewardship Area;
 - 2. encourage scientific research on marine ecosystems, ocean resources, and oceanographic conditions to acquire information needed to make ocean and coastal-management decisions;
 - 3. seek co-management arrangements with federal agencies when appropriate to ensure that ocean resources are managed and protected consistent with the policies of the Territorial Sea Plan; and
 - 4. cooperate with other states and governmental entities directly and through regional mechanisms to manage and protect ocean resources and uses.