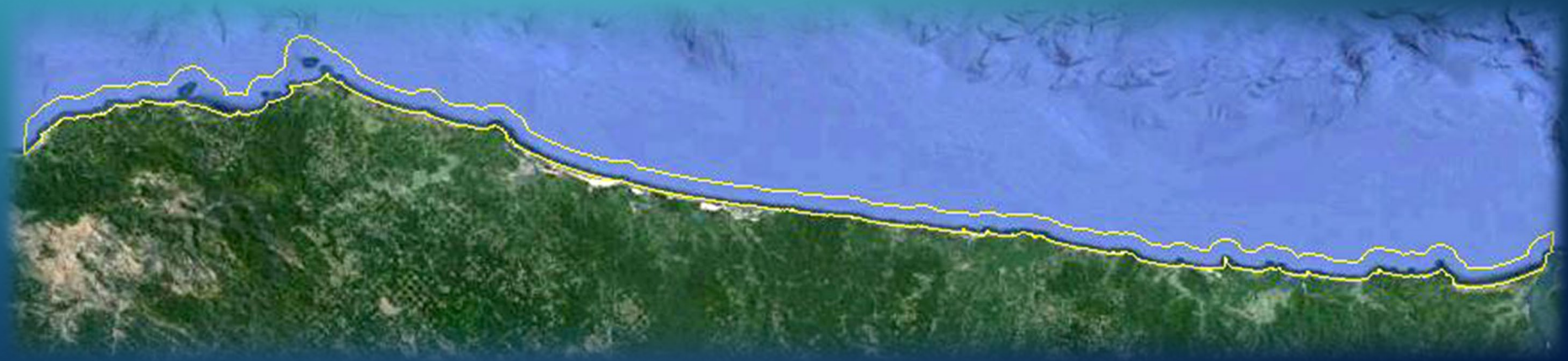
TERRITORIAL SEA PLAN PART 5

USE OF THE TERRITORIAL SEA FOR THE DEVELOPMENT OF RENEWABLE ENERGY FACILITIES OR OTHER RELATED STRUCTURES, EQUIPMENT OR FACILITIES



BRIEFING OUTLINE

- Territorial Sea Plan – Introduction & Why We're Here
- Part 5 Process and Amendment History
- Court of Appeals Decision
- Alternatives for moving forward

ATTACHMENTS

- Executive Order 08-07: Directing State Agencies to Protect Coastal Communities in Siting Marine Reserves and Wave Energy Projects
- October 2008 Staff Report: Agenda Item 8
- LCDC Order 13-OCMP-001842
- January 2013 Staff Report
- Court of Appeals Decision: *Ciecko v. DLCD,* 290 Or App 655 (2018).

Oregon Coastal Management Program

COASTAL ZONE

362 Mile Coastline

22 Major Estuaries

7,800 Sq. Miles

Coastal Watershed

Territorial Sea

0-3 Miles

1,100 Sq. Miles

JURISDICTIONS

Counties

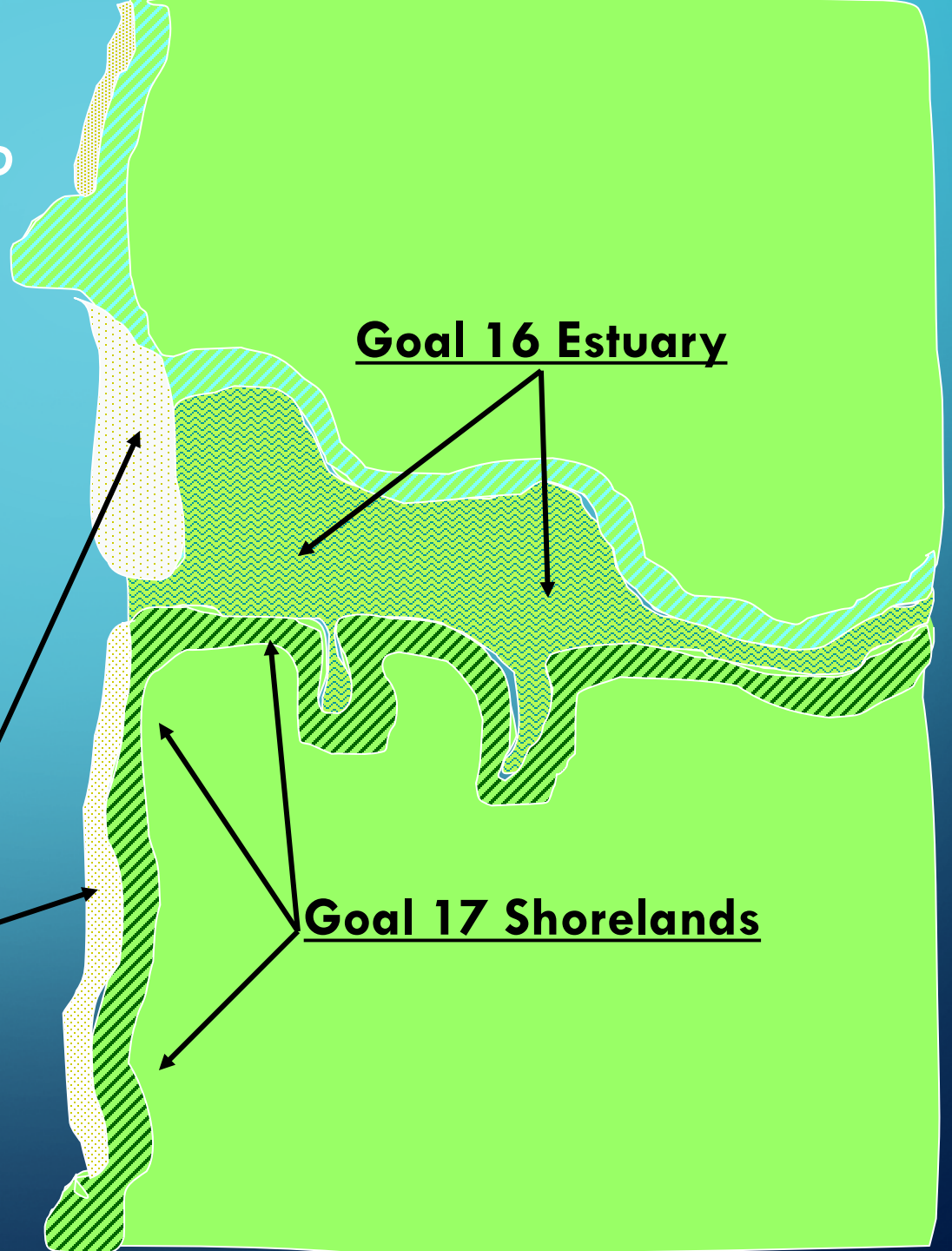
- Clatsop
- Tillamook
- Lincoln
- Lane
- Douglas
- Coos
- Curry

Cities

- Astoria
- Warrenton
- Seaside
- Gearhart
- Cannon Beach
- Manzanita
- Nehalem
- Wheeler
- Rockaway
- Garibaldi
- Bay City
- Tillamook
- Lincoln City
- Depoe Bay
- Siletz
- Newport
- Toledo
- Waldport
- Yachats
- Florence
- Dunes City
- Reedsport
- Lakeside
- North Bend
- Coos Bay
- Coquille
- Myrtle Point
- Powers
- Bandon
- Port Orford
- Gold Beach
- Brookings

THE COASTAL GOALS

THE COASTAL GOALS APPLY TO SPECIFIED GEOGRAPHIC AREAS



Goal 19
Ocean Resources

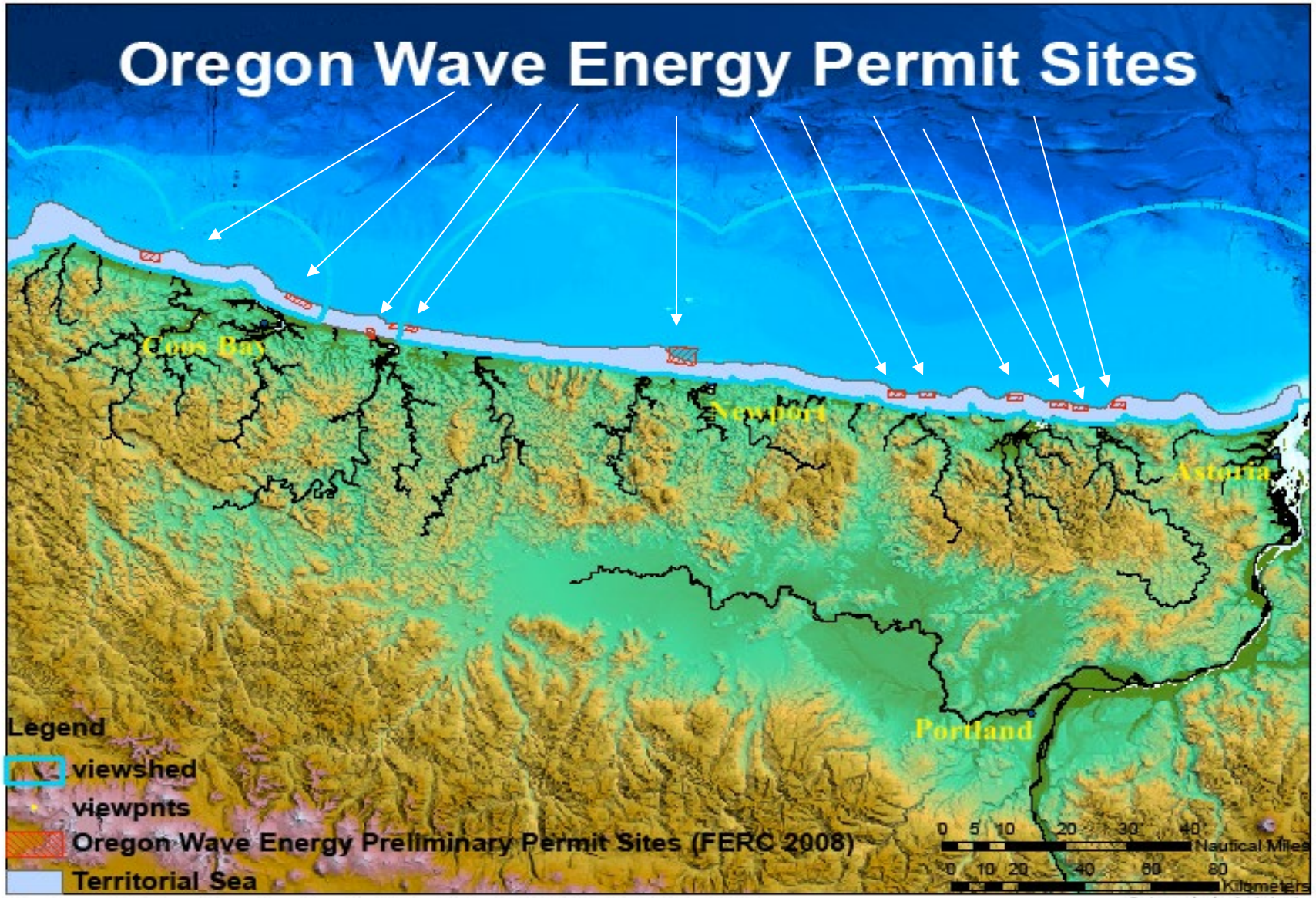
Goal 18 Beaches and Dunes

WHAT HAPPENS WHEN YOU DROP THIS

Attached to a cement anchor the size of a 2- car garage

IN THE MIDDLE OF THEIR BEST FISHING GROUNDS

Wave Energy Goldrush of 2007-2008



Wave Energy Site Information gathered from the FERC website and plotted by the USFWS and DLCD.

Cartography by Andy Lanier
DEM courtesy of the Active Tectonics and Seafloor Mapping Lab

Please…

HELP US SAVE OUR FISHING COMMUNITY!

Oregon Fisherman have contributed billions of dollars to Oregon's economy.

OREGON Dungeness Crab COMMISSION

You Get a Reaction!

Oregon Dungeness Crab Commission
P.O. Box 1160
964 Central Ave.
Coos Bay, OR 97420

Phone: 541-267-5810
Fax: 541-267-5772
Email: hugh@oregondungeness.org

Oregon Fishermen need your help!

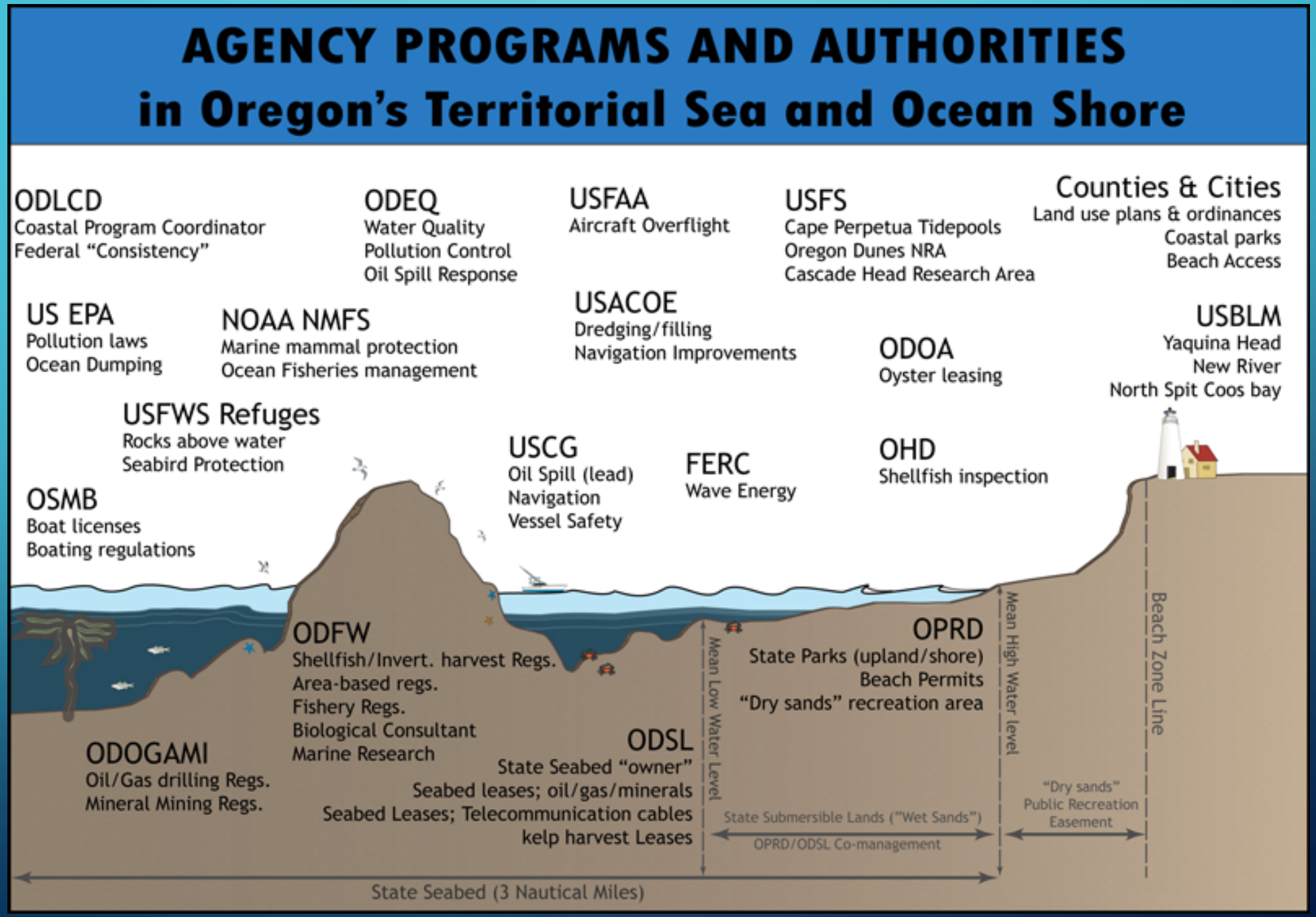
WAVE ENERGY
Is it FAIR?

The Oregon Dungeness Crab Commission asks you to

BE INFORMED


IN COD
WE TRUST
OREGON
CRAB BAIT
BUDWEISE
GOVERNOR KULONGOSKI'S OFFICE
LIKENS COASTAL STAKEHOLDERS
TO NARROW MINDED RACISTS.
ALL WE WANT ARE ANSWERS.
Our questions deserve more than insults.
OREGON COAST
DEFENSE LEAGUE
OCDL
541-347-1798
BEN DAVIS
You don't want to miss the...
CHARLESTON
Oyster Feed
2008 BIG GAME
RAFFLE HUNTS
Tickets sold at this location.
PLEASE
NO WAVE ENERGY
NO MARINE RESERVES

AGENCY PROGRAMS AND AUTHORITIES in Oregon's Territorial Sea and Ocean Shore



OREGON'S OCEAN PLANNING FRAMEWORK

Statewide Planning Goal 19, Ocean Resources
(mandates protection of important marine habitat and fisheries)

Oregon Ocean Resources Management Act (ORS 196.405)
(creates state-ocean governance structure)

Oregon Territorial Sea Plan (TSP)
(contains specific policies for state ocean management)

Ocean Policy Advisory Council (OPAC)

STATEWIDE GOAL 19: OCEAN RESOURCES

Renewable Marine Resources
i.e. Living Marine Organisms

Biological Diversity & Functional Integrity of Marine Ecosystems

Important Marine Habitat

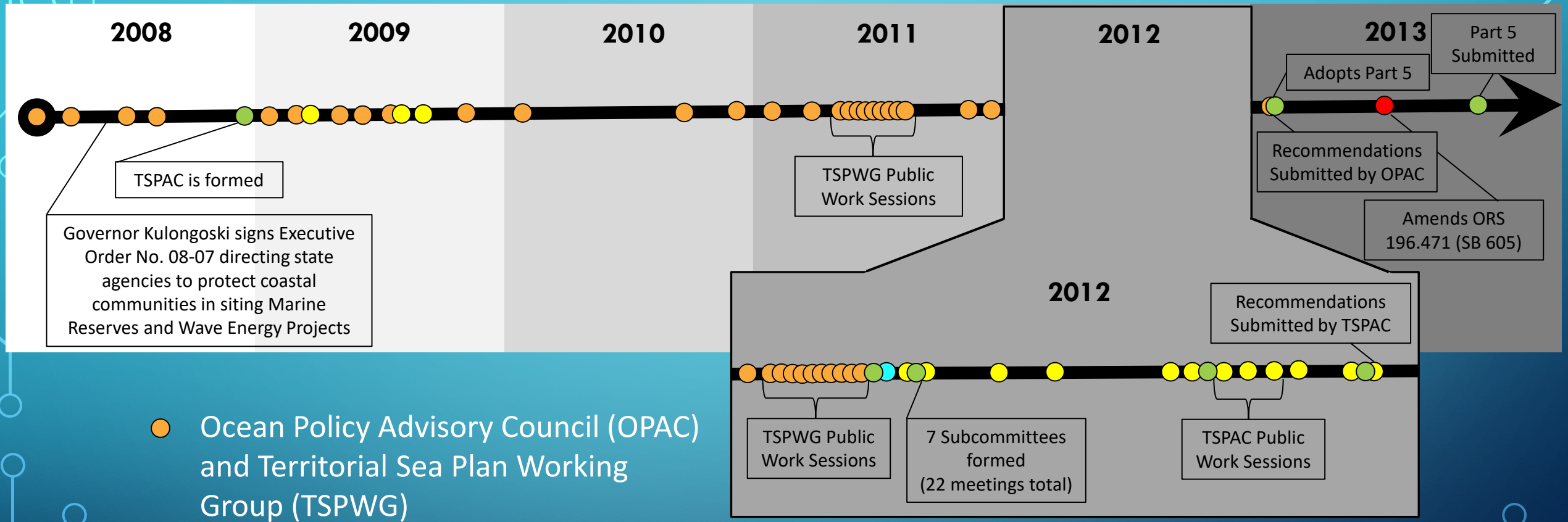
Areas Important to Fisheries
Commercial & Recreational

Beneficial Uses: Navigation, Recreation, Food Production, Aesthetic, Seafloor Uses

OREGON TSP PART 5 AMENDMENT PROCESS

- Governor's Executive Order - March 2008
- Oregon FERC MOU - March 2008
- TSP Part 5 Adopted (Policy Framework) - November 2009
- TSP Part 5 Amended (Spatial Framework and Review Standards) – January 2013
- Court of Appeals Ruling – March 2018

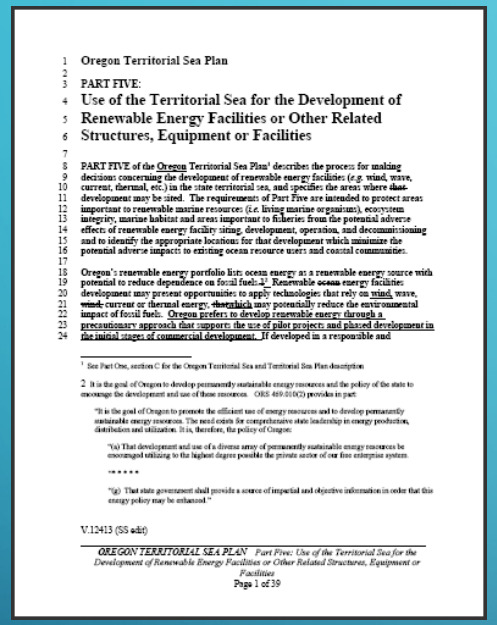
PART 5 AMENDMENT TIMELINE 2008-2013



- Ocean Policy Advisory Council (OPAC) and Territorial Sea Plan Working Group (TSPWG)
- Land Conservation and Development Commission (LCDC)
- The Territorial Sea Plan Advisory Committee (TSPAC)
- The Oregon State Legislature

TERRITORIAL SEA PLAN PART FIVE (2013)

PART FIVE CHAPTER



Oregon Territorial Sea Plan

PART FIVE:
Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities

PART FIVE of the Oregon Territorial Sea Plan[1] describes the process for making decisions concerning the development of renewable energy facilities (*e.g.* wind, wave, current, thermal, etc.) in the state territorial sea, and specifies: the areas where ~~that~~ development may be sited. The requirements of Part Five are intended to protect areas important to renewable marine resources (*i.e.* living marine organisms), ecosystem integrity, marine habitat and areas important to fisheries from the potential adverse effects of renewable energy facility siting, development, operation, and decommissioning and to identify the appropriate locations for that development which minimize the potential adverse impacts to existing ocean resource users and coastal communities.

Oregon's renewable energy portfolio lists ocean energy as a renewable energy source with potential to reduce dependence on fossil fuels.[2] Renewable ~~ocean~~ energy facilities development may present opportunities to apply technologies that rely on wind, wave, ~~wind~~ current or thermal energy, ~~therefrom~~ which may potentially reduce the environmental impact of fossil fuels. Oregon prefers to develop renewable energy through a precautionary approach that supports the use of pilot projects and phased development in the initial stages of commercial development. If developed in a responsible and

[1] See Part One, section C for the Oregon Territorial Sea and Territorial Sea Plan description

2 It is the goal of Oregon to develop permanently sustainable energy resources and the policy of the state to encourage the development and use of those resources. ORS 469.010(2) provides in part:

"It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

"(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

* * * * *

"(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced."

V.12413 (SS edit)

OREGON TERRITORIAL SEA PLAN Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities
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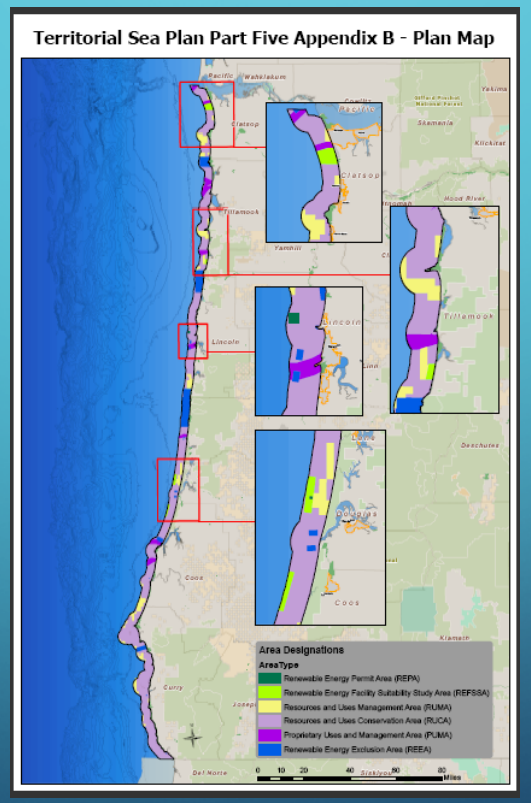
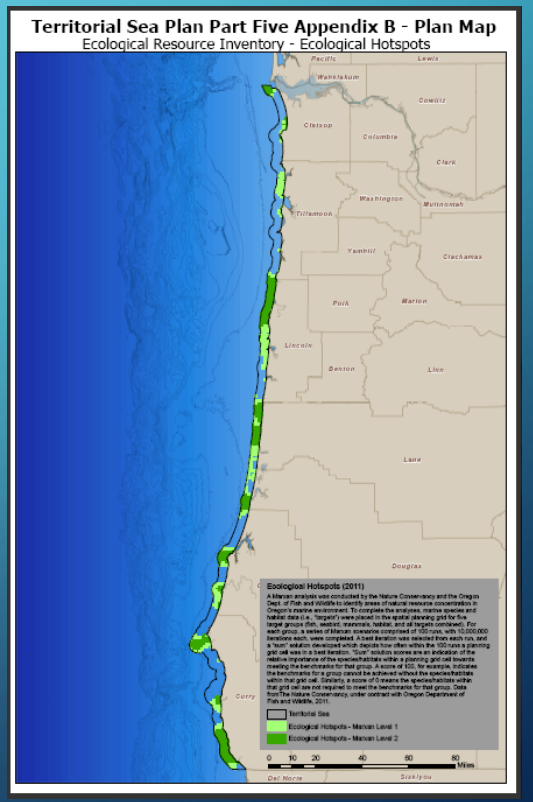
MRE Policy
Review Process (JART)
Inventory and Effects evaluation process
Review Standards
Plan Review
Decommissioning Requirements

PLAN MAP & AREA DESIGNATIONS



RESOURCES & USES INVENTORY

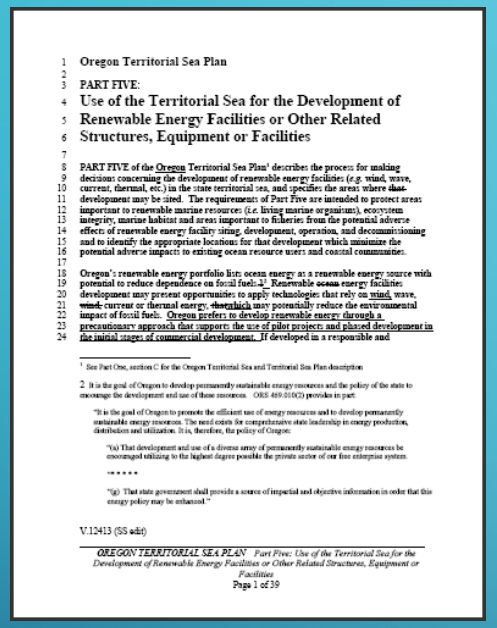


THE COURT OF APPEALS DECISION

- The petitioners (who provided public testimony to LCDC on May 24, 2018) challenged the validity of the TSP amendments on the **procedural grounds.**
- Procedures established in statute ORS 196.471(3)(a) (which were amended in June 2013 by Senate Bill 605), were applied to the Part 5 amendments which LCDC adopted in January of 2013.
- The Court of Appeals decision also recognizes the joint roles played in the coordination and management of ocean resources by OPAC and LCDC.

TERRITORIAL SEA PLAN PART FIVE (AS OF MARCH, 2018)

PART FIVE CHAPTER



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OREGON TERRITORIAL SEA PLAN Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities
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MRE Policy

~~Review Process (JART)~~

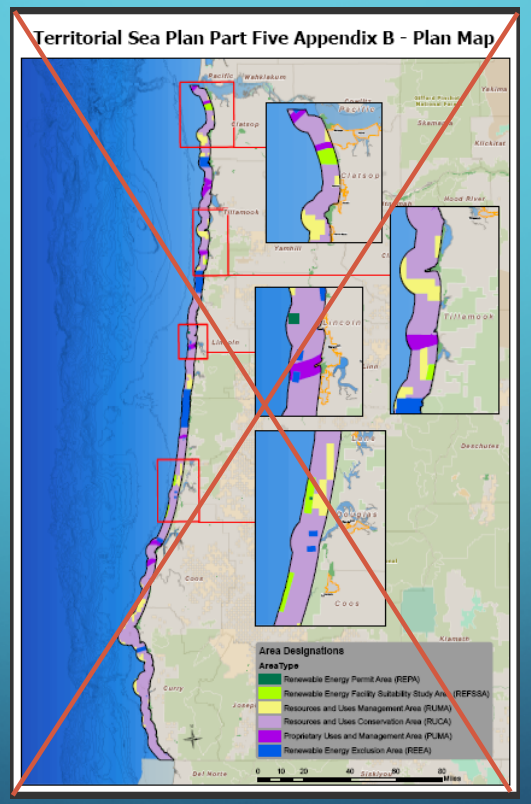
~~Inventory and Effects evaluation process~~

~~Review Standards~~

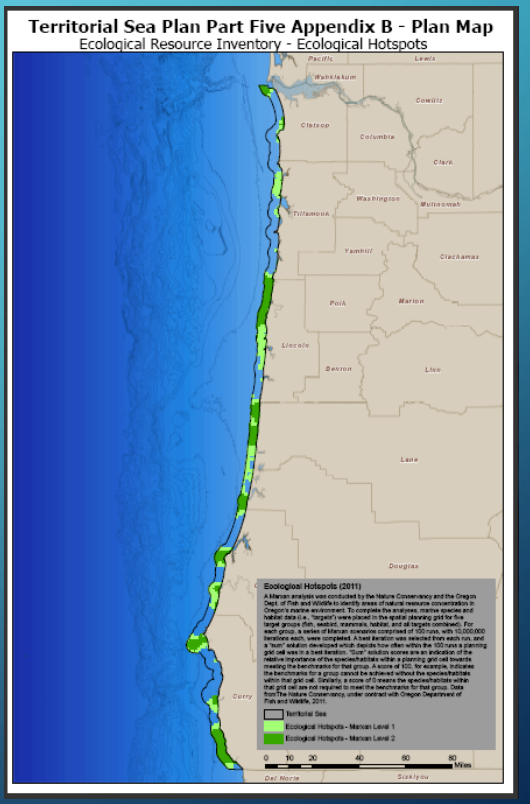
~~Plan Review~~

Decommissioning Requirements

~~PLAN MAP & AREA DESIGNATIONS~~



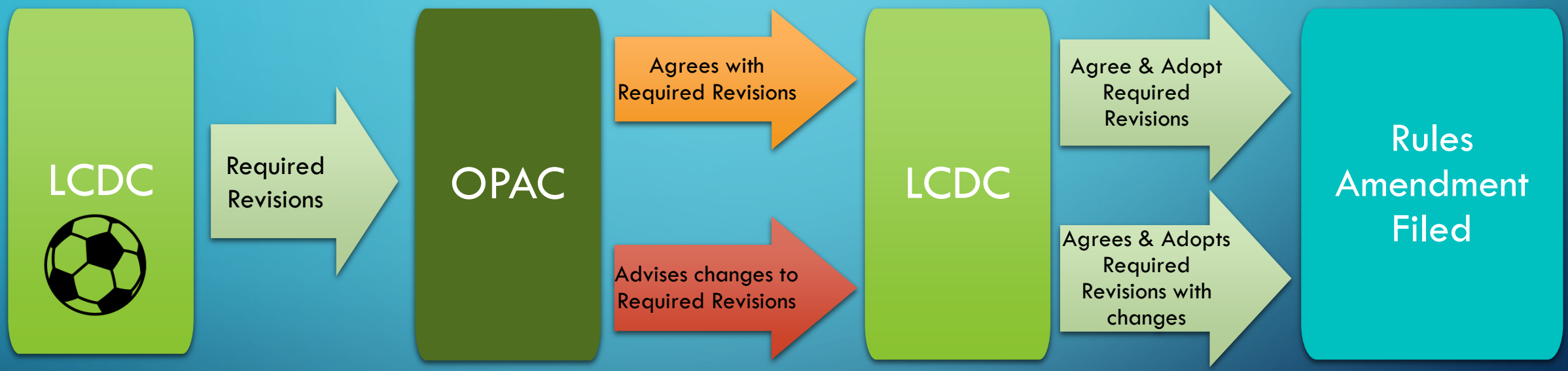
RESOURCES & USES INVENTORY



POTENTIAL PATHWAYS FOR PART 5 AMENDMENT

- Alternative 1: The commission could leave the 2009 version of Part 5 in place for the foreseeable future.
- Alternative 2: The commission could adopt the original 2013 OPAC recommendations, provided that the commission could make the required statutory and goal findings.
- Alternative 3: The commission could return the adopted 2013 Part 5 to OPAC as its specification of needed revisions, or
- Alternative 4: The commission could modify the adopted 2013 Part 5 and send those to OPAC as its specification of needed revisions.

LCDC & OPAC
TERRITORIAL SEA PLAN AMENDMENT PROCESS



CONCLUSIONS

- At this time, no action is requested of the commission.
- September staff report will include a description of the 2013 OPAC, TSPAC, and Staff recommendations – and the differences between them, an overview of the commission's 2013 decision.
- Staff will also provide a recommendation on the preferred alternative for moving forward to re-adopt Part 5.


QUESTIONS?

PART FIVE PLAN MAP AREAS

Renewable Energy Exclusion Area (REEA)	Proprietary Use and Management Area (PUMA)	Resources and Uses Conservation Area (RUCA)	Resources and Uses Management Area (RUMA)	Renewable Energy Facility Suitability Study Area (REFSSA)	Renewable Energy Permit Area (REPA)
Special Management Areas designated by statute and OAR	**Areas with authorized uses and special management designations under Goal 19**	**Areas with important, sensitive, or unique Goal 19 Resources and Uses**	**Areas with important or significant Goal 19 Resources and Uses**	**Areas of least conflict with Goal 19 Resources and Uses**	**Areas of existing MREC permits**
MRE applications will not be accepted within these areas	MRE applications will not be accepted unless legally permissible, comply with the authorized use and area standards, and agreed to by the authorized users.	MRE applications must demonstrate **no reasonably foreseeable adverse effects** on inventoried marine resources and uses.*	MRE applications must demonstrate **no significant adverse effects** on inventoried marine resources and uses.	MRE applications must comply with **TSP Part Five Sections B and C,** general standards, and the applicable regulatory and proprietary requirements of state and federal agencies.*	Delineated sites with existing authorization for the development of MRE testing, research or facilities.

Visual Resource Area Overlay

Marine Recreation Area Overlay

Screening standards applied to all areas

Higher **Permit Review Standards** **Lower**

Already permitted.

TSP Review Standards Matrix

	General Fisheries Standards	Visual Resource Impact Standards	Recreation Resource Impact Standards	No Significant Adverse Effects	No Reasonably Foreseeable Adverse Effects	Presumptive Exclusion
REEA	n/a	n/a	n/a	n/a	n/a	n/a
PUMA						
RUCA						*ISU
RUMA						
REFFSA				ecological		
REPA	n/a	n/a	n/a	n/a	n/a	n/a

RENEWABLE ENERGY EXCLUSION AREA (REEA)

Objective: To protect permitted uses and special management areas under Goal 19 Ocean Resources.

- No development of marine renewable energy will be permitted in these areas.
- Marine Reserves and Protected Areas (Redfish Rocks, Otter Rock, Cascade Head, Cape Perpetua, Cape Falcon)

- 130 mi^2 ~ 10%

Resource Inventory Layers Included:

- State Designated Marine Managed Areas including Marine Reserves and Protected Areas
- Dredge Material Disposal Sites

PROPRIETARY USE AND MANAGEMENT AREA (PUMA)

Areas with authorized uses and special management designations under Goal 19 Ocean Resources.

- MRE applications will not be accepted unless the use is legally permissible, complies with the authorized use of the area, and has been agreed to by the authorized users.

- 68 mi^2 ~ 5%

Resource Inventory Layers Included:

- Commercial Shipping Lanes (Deep & Shallow draft)
- Coastal Discharge Outfalls
- Coastal National Wildlife Refuges
- OR Islands National Wildlife Refuges
- Research Cables and Infrastructure
- Undersea Telecommunication Cables
- Ocean Outfalls
- Pilotage Areas

RESOURCE AND USE CONSERVATION AREA (RUCA)

Areas of important, significant, or unique (ISU) ecological resources, significant economical importance to commercial fishing sectors, recreational fishing, or individual ports, and ocean recreation hotspots.

- MRE applications must demonstrate that the project will have no reasonably foreseeable adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses.

- 900 mi^2 ~ 72%

Resource Inventory Layers Included:

- Areas of Greatest Importance to Fisheries
- Ocean Recreation Hotspots
- Kelp Beds
- Subtidal Rocky Reef
- Rock Shores Habitat
- Pinniped Haulout
- Steller Sea Lion Critical Habitat
- Nesting Seabird Colonies
- Snowy Plover Critical Habitat
- Level I Marxan (core hotspots)

RESOURCE AND USE MANAGEMENT AREA (RUMA)

Areas with important or significant ecological resources, economically important to commercial fishing sectors, recreational fishing, or individual ports.

- MRE application must demonstrate no significant adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses.
- 137 mi^2 ~ 11%

Resource Inventory Layers Included:

- Oceanographic Research Inventory
- Crabber Tugboat Agreement lanes
- Ocean Recreation
- Gray Whale Foraging Area
- Marbled Murrelet Foraging
- Level II Marxan (core hotspots)
- Areas of Great Importance to Fisheries

RENEWABLE ENERGY FACILITY SUITABILITY STUDY AREA (REFSSA)

Area with lowest potential adverse effects with ecological resources and activities relating to commercial fishing sectors, recreational fishing, or individual ports.

- A proposal for MRE development must comply with TSP Part Five Sections B and C, and the applicable regulatory and proprietary requirements of state and federal agencies.
- Would not automatically exclude other uses
- 22 mi^2 ~ 2%

Resource Inventory Layers Included:

- Navigational Aides
- Inactive Dredge Material Disposal Sites

RENEWABLE ENERGY PERMIT AREA (REPA)

Areas are delineated sites for which there is an existing authorization for the development of MRE testing, research or facilities.

- Applications for MRE development within a REPA must comply with the terms and conditions required by the regulating agency authorization for the site.

- 2 mi^2 ~ 0%

Resource Inventory Layers Included:

- OPT permitted site
- NNMREC permit site

MARINE RECREATION AREA OVERLAY

Proposal: Standard applicable to the entire Territorial Sea

A. Ocean renewable energy may not have a significant adverse effect on significant known recreational uses.

B. A significant adverse effect occurs when:
   I. Access is denied or unreasonably impeded.
   II. The project creates reasonably foreseeable health or safety impacts.
   III. The project would have reasonably foreseeable significant impacts on the natural environment that the recreational community depends on.

C. Significant recreational use occurs where there is a:
   I. Community of historical users;
   II. High intensity of use, or
   III. Uniqueness or a special quality associated with the recreational use relative to the state or region.

VISUAL RESOURCE OVERLAY

Visual Resource Management has 2 distinct phases:

- *Planning phase:* A baseline of visual quality is used to model viewshed quality, and that is applied to the standards for visual resource impacts. The visual resource management framework covers the full extent of the Territorial Sea.

- *Regulatory phase:* project applicant will be required to conduct an evaluation of potential impacts to visual resources, or a Visual Impact Analysis (VIA).