

OREGON¹

State Authority for Marine Protection

Summary of State Authority

Oregon has a recent (2009-2012) statute creating marine reserves and marine protected areas; long-standing ocean and coastal planning authority through its Territorial Sea Plan and statewide land-use planning law; an incentive-based voluntary system of state natural areas that includes marine and estuarine resources; and additional protection of some subtidal and intertidal areas through no-take fishery regulations. Taken together, these authorities provide a solid footing for area-based protection, with ample room for improvement and future expansion.

| | Marine Reserves/ Marine Protected Areas Statute | Ocean Resources Management Program/ Territorial Sea Plan | Statewide Land-Use Planning, Goals 16 through 19 | Natural Areas Program, Marine and Estuarine Ecoregion | Fisheries Management, Marine Gardens and Research Reserves |
|------------------------------------|---|--|--|--|--|
| Legal requirement | Designates marine reserves and protected areas | Implements federal CZMA and extends state planning to ocean areas | Includes coastal resources in state land-use planning | Allows state acquisition and management of natural areas | Applies fisheries regulations to specific coastal resources |
| Citation | ORS §§ 196.540-.580 (2009); SB 1510 (2012) | ORS §§ 196.405-.515 (1987) | ORS ch. 197 (1973) | ORS § 273.563-.591 (1979) | ORS ch. 496-498 (rec.); ORS ch. 506-513 (commercial) |
| Designation authority | State Legislature adopting Ocean Policy Advisory Council recs | Dept. of Land Conservation and Development (DLCD) | Dept. of Land Conservation and Development | Parks and Recreation Dept. | Dept. of Fish and Wildlife |
| Management & enforcement authority | Dept. of Fish and Wildlife, OR State Police | DLCD, Dept. of Fish and Wildlife | DLCD, local government (below) | Parks and Recreation Dept. | Dept. of Fish and Wildlife |
| Jurisdiction & boundaries | 5 reserve sites & associated MPAs, within territorial sea; boundaries set by Department | State waters to toe of continental margin; identification of priority rock and | Estuaries, coastal lands, beaches and dunes, ocean resources; also potentially | Designated marine and estuarine resources, out to toe of continental | Designated marine and estuarine resources, subtidal and intertidal |

¹ This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at www.eli-ocean.org/mpa.

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|------------------------|--|--|--|---|---|
| | of State Lands by rule | reef areas | “areas of critical state concern” | margin | |
| Prohibited uses | Reserves: no take or extraction; MPAs: site-specific species and gear restrictions | Incorporates site-specific DFW fishing restrictions (column 5) | Determined by local governments (below) | Incentives and management measures to preserve as natural areas | Shellfish and invertebrate take; species-specific and seasonal closures |
| Permitted uses | Reserves: research; MPAs: site-specific species and gear allowances | | | | Scientific take in research reserves; some species-specific take |

The state of Oregon’s jurisdiction over its coastal waters extends three nautical miles seaward,² though the state has also declared jurisdiction over a “Fisheries Conservation Zone,” extending from the mean high-water mark seaward to a distance of 50 miles.³ The Department of State Lands (DSL) has exclusive jurisdiction over state submerged lands, including the Territorial Sea.⁴ DSL is the ultimate regulatory authority for activities within state waters; it owns the seabed, issues permits and leases authorizing every manner of usage, and enforces against those who do not comply.⁵

Marine Reserves

In 2009, the Oregon Legislature authorized a system of marine reserves.⁶ The statute adopted the state Ocean Policy Advisory Council’s (OPAC’s) recommendations (1) to establish two pilot “marine reserves” and a marine protected area in two locations, (2) to study and evaluate potential marine reserves in three other locations, and (3) to develop a marine reserve proposal for a sixth location.⁷ In 2012, the Legislature then established three more marine reserves in the three study locations, each adjoined by new marine protected areas.⁸ The Scientific and Technical Advisory Committee of OPAC will study and prepare a report to the Legislature on this initial five-site reserve system, including “[r]ecommendations for administrative actions and legislative proposals,” by March 2023.⁹

² See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

³ ORS § 506.755(1).

⁴ ORS § 274.710.

⁵ *Id.*; e-mail communication with Paul Klarin, Oregon Marine Program Coordinator.

⁶ Oregon Revised Statutes §§ 196.540-.580 (2009).

⁷ ORS § 196.540; see ORS 196.443(d) (OPAC authorized to recommend marine reserve sites after performing an economic impact analysis).

⁸ Oregon Senate Bill 1510, amending ORS § 196.540 (adopted March 5, 2012), § 2.

⁹ *Id.* § 4. The five marine reserve sites are (from North to South): (1) Cape Falcon Marine Reserve (32.8 km²), Marine Protected Area, and Shoreside Marine Protected Area, in effect 2016, see OAR 141-142-0085 to -0095, OAR 635-012-0140 to -0150; (2) Cascade Head Marine Reserve (29.9 km²) and Marine Protected Areas, in effect 2014, see OAR 141-142-0065 to -0080, OAR 635-012-0110 to -0130; (3) Otter Rock Marine Reserve (3.35 km²), currently in effect, see OAR 141-142-0030, OAR 635-012-

The statute directed the state Department of Fish and Wildlife (DFW), Fish and Wildlife Commission, State Land Board, and “relevant state agencies” to implement the marine reserves by rule and through a work plan.¹⁰ DFW was charged with developing the work plan in consultation with OPAC’s scientific and technical advisory committee, “other relevant marine and fishery scientists, relevant state agencies, ocean users and coastal communities”; and the plan is required to include rules, site-specific biological and socioeconomic assessments and monitoring plans, baseline data and “scientifically based goals,” public information and community engagement, and an enforcement strategy.¹¹ No fishing restrictions may be imposed in an area until the collection of baseline data is complete.¹²

Oregon’s regulations adopted the federal definition of a marine protected area, defining it broadly as “any area of the marine environment within Oregon’s Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources therein.”¹³ The “marine reserves” are more restrictively defined as an “area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research...”¹⁴ In general, take of any fish or wildlife species is prohibited in the marine reserves, while the rules make some species- or gear-specific prohibitions and allowances for each of the marine protected areas.¹⁵

As of February 2013, administrative rules are in place for all five designated marine reserves and their associated protected areas.¹⁶ Harvest restrictions have been in place since 2012 for two reserves, Redfish Rocks and Otter Rock; will go into effect in 2014 for two more, Cape Perpetua and Cascade Head; and in 2016 for the remaining one, Cape Falcon.¹⁷ Site management plans have been completed for Redfish Rocks and Otter Rock, and are in development for the remaining three reserves.¹⁸ Monitoring reports will be provided biennially for all sites, with a five-year public review and updating scheduled for 2016, and site-specific implementation reports are due every five years from the date each site management plan is finalized, culminating in the 2023 OPAC report to the Legislature.¹⁹

Oregon Ocean Resources Management Program and Territorial Sea Plan

Oregon manages its ocean resources through a statutory Ocean Resources Management Program, which also implements the state’s obligations under the federal Coastal Zone Management Act.²⁰ The state Department of Land Conservation and Development (DLCD) is the primary agency for coordinating

0050; (4) Cape Perpetua Marine Reserve (36.8 km²), Marine Protected Areas, and Seabird Protection Area, in effect 2014, OAR 141-142-0045 to -0060, OAR 635-012-0080 to -0100; and (5) Redfish Rocks Marine Reserve (6.78 km²) and Marine Protected Area (15 km²), currently in effect, OAR 141-142-0035 to -0040, OAR 635-012-0060.

¹⁰ ORS §§ 196.540, .545.

¹¹ ORS §§ 196.545(1)-(2); see Oregon DFW, Oregon Marine Reserves Program Work Plan (Jan. 17, 2013).

¹² Oregon Senate Bill 1510, § 3(1).

¹³ OAR 141-142-0015(6); see federal Executive Order 13158.

¹⁴ OAR 141-142-0015(7).

¹⁵ OAR 635-012-0050 (marine reserves); see, e.g., OAR 635-012-0060 (commercial and recreational salmon trolling and crab harvest permitted at Redfish Rocks MPA), OAR 635-012-0120 (take of all species permitted at Cascade Head South MPA, but use of net gear prohibited).

¹⁶ See Oregon Administrative Rules 141-142-0010 to -0095 (Department of State Lands, establishing boundaries of marine reserves and marine protected areas); OAR 635-012-0020 to -0160 (Department of Fish and Wildlife, implementing harvest restrictions and allowances for each area).

¹⁷ OAR 635-012-0040.

¹⁸ See Oregon Marine Reserves Program Work Plan.

¹⁹ *Id.*

²⁰ ORS §§ 196.405-.515.

ocean resources planning and for carrying out the CZMA, assisted by the Ocean Policy Advisory Council and its constituent agencies and stakeholders.²¹

The Department, its overseeing Land Conservation and Development Commission (LCDC), and OPAC are responsible for reviewing, adopting, and amending Oregon's Ocean Resources Management Plan and Territorial Sea Plan.²² These plans must be consistent with statewide land-use planning goals, in particular the four goals governing coastal resources (see below);²³ must be compatible with the comprehensive plans of adjacent counties and cities;²⁴ and should ("may") be coordinated with relevant federal agency programs.²⁵ Other state agency actions affecting ocean resources must be consistent with the plans, and the agencies may incorporate them by reference into their programs.²⁶

The Ocean Resources Management Plan created "a broad policy framework for ocean management."²⁷ It defines the entire coastline as an "Ocean Stewardship Area," which extends beyond state waters to the toe of the continental margin; identifies 33 "sensitive marine habitats" on offshore rocks, islands, and shoreline cliffs where resources will require protection; and prohibits oil and gas development in state waters and, through CZMA consistency, attempts to condition those activities in federal waters.²⁸

The subsequent Territorial Sea Plan fills in specific policies as they are adopted and amended.²⁹ Its "Rocky Shores Management Strategy" prioritizes coastal rock and reef areas, prescribes management measures for these areas, and describes and incorporates Department of Fish and Wildlife regulations restricting shellfish take in some of them.³⁰ The Plan also includes a January 2013 amendment that addressed siting of wave-energy projects.³¹ This "ocean zoning" plan designates four "Renewable Energy Suitability Study Areas," totaling 22 square miles, where permit requirements will be less stringent than in areas designated for conservation and other ocean uses.³²

Statewide Land-Use Planning

Coastal and Estuarine Management

Oregon has statewide comprehensive land-use planning. Under that program, the Land Conservation and Development Commission administers 19 Statewide Planning Goals that provide a standard basis for cities and counties to adopt in their land-use plans.³³ Goals 16 through 19 deal with coastal resources, and "provide the foundation for the state's coastal management program."³⁴ Goal 16 covers estuarine resources, Goal 17 covers coastal shorelands, Goal 18 covers beaches and dunes, and Goal 19,

²¹ ORS §§ 196.435, .438.

²² ORS § 196.471.

²³ ORS § 196.471(b).

²⁴ ORS § 196.465.

²⁵ ORS § 196.455.

²⁶ ORS § 196.485.

²⁷ Oregon Territorial Sea Plan, "Part One: Ocean Management Framework," Section D.2.b.

²⁸ *Id.*

²⁹ *Id.*, Section D.2.c.

³⁰ *Id.*, Part Three.

³¹ Allison Winter, "Ore. Zones Its Coast for Wave Energy Development," *Greenwire* (Jan. 25, 2013).

³² *Id.*; see www.oregonocean.info.

³³ See generally ORS § 197.005 et seq.; Oregon Department of Conservation and Land Development, "Statewide Planning Goals," <http://www.oregon.gov/lcd/pages/goals.aspx>.

³⁴ Coastal States Organization/National Marine Protected Areas Center, "Oregon's Estuary Management Plans/Natural and Conservation Management Units," in *Case Studies of State-Level Marine Managed Area Systems* (May 2004), at 14.

“Ocean Resources,” establishes Oregon’s Ocean Stewardship Area and addresses issues of federal/state consistency. Coastal counties and cities must specifically implement these goals in their comprehensive plans, as illustrated for Goal 16 estuarine resources in the local authority section below.

Statewide Planning Goal 19 represents Oregon’s broad attempt to coordinate local, state, and federal agency actions through the land-use planning process and CZMA consistency. It aims “[t]o conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations,” by protecting renewable marine resources, biological diversity, important marine habitat, and areas important to fisheries.³⁵ These protections can include “special management area plans...for certain marine areas to address the unique management needs for resource protection, resource utilization, and interagency cooperation in the areas,”³⁶ with the area designations and management measures presumably spelled out in the Territorial Sea Plan (above).

Areas of Critical State Concern

Under the land-use planning law, LCDC also may recommend to the Legislature the designation of “areas of critical state concern,” defined by specific boundaries, for which permissible uses may be restricted.³⁷ It is unclear whether this provision applies to marine areas,³⁸ but it may provide additional authority.

Natural Areas Program

The Natural Areas Program allows for inclusion of natural areas in the Oregon Register of Natural Areas, “a discrete and limited system of natural areas that are selected to represent the full range of Oregon’s natural heritage resources.”³⁹ These may be “a unit of land or water or both...that has substantially retained its natural character, or... [is] valuable as habitat for plant and animal species or for the study and appreciation of the natural features.”⁴⁰ Private landowners and public land managers may nominate land for inclusion in the Register, which is maintained by the State Parks and Recreation Department; and may ultimately agree to dedicate it as a “state natural area.”⁴¹ Participation in the Program remains voluntary, with tax incentives and conservation advice provided by the state;⁴² and designations can be revoked, though state agency designations in practice have remained permanent.

The Oregon Natural Areas Plan includes the “Marine and Estuarine Ecoregion” as one of the natural resource types covered by the Program and Register, and several subtidal, intertidal, and offshore resources are listed.⁴³ However, the Plan also notes that “examples of these resources are currently not well represented in Oregon’s system of natural areas,” and states that the newer system of marine reserves will be “an excellent opportunity to better protect” these resources.⁴⁴

³⁵ OAR 660-015-0010(4).

³⁶ *Id.*

³⁷ ORS § 197.405.

³⁸ See Cassandra A. Brown, Marine Protected Areas off the Coast of Oregon, University of Oregon Ocean and Coastal Law Center Research Paper No. 1 (Dec. 2001), at 7.

³⁹ ORS § 273.566(1).

⁴⁰ ORS § 273.563(7).

⁴¹ ORS §§ 273.581, .586.

⁴² Oregon Natural Areas Plan (2010), at 16. As of 2010, no private landowners other than conservation organizations had dedicated land into the system. *Id.*

⁴³ *Id.* at 38-42.

⁴⁴ *Id.* at 38.

Fisheries Management, Marine Gardens and Research Reserves

Oregon has declared jurisdiction over a “Fisheries Conservation Zone,” extending from the mean high water mark seaward to a distance of 50 miles.⁴⁵ Marine commercial fishery regulation within the zone is regulated by the State Fish and Wildlife Commission “for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources,”⁴⁶ to the extent it is not pre-empted by the Pacific Fishery Management Council’s management plans. The Commission regulates these fisheries with an array of licenses and permits, gear and species restrictions, and seasonal closings.⁴⁷ It also has jurisdiction over native shellfish (oysters, clams, and mussels) and other marine invertebrates, while cultivated shellfish are regulated separately by the Department of Agriculture.⁴⁸

Besides the marine reserves (above), Department of Fish and Wildlife fishery regulations have created and enforced other kinds of protected areas. These include seven intertidal “marine gardens,” which are generally closed to take of shellfish and marine invertebrates; seven subtidal and intertidal “research reserves,” which are likewise closed except for scientific take and some species-specific exceptions; one “habitat refuge” closed to take of all fish and invertebrates; two shellfish preserves; and other seasonal closures.⁴⁹

Evaluation of State Authorities⁵⁰

| FACTORS | Marine Reserves/ Marine Protected Areas Statute | Ocean Resources Management Program/ Territorial Sea Plan | Statewide Land-Use Planning, Goals 16 through 19 | Natural Areas Program, Marine and Estuarine Ecoregion | Fisheries Management, Marine Gardens and Research Reserves |
|------------------------------|--|---|--|---|--|
| Legal regime | ★★★★★ Regulatory | ★★★★★ Planning | ★★★★★ Planning | ★★★ Incentive-based | ★★★★★ Regulatory |
| Ocean jurisdiction | ★★★★★ All marine waters | ★★★★★ All marine waters | ★★★★★ Estuarine and marine waters | ★★★★★ All marine waters | ★★★ Designated subset of marine waters |
| Durability | ★★★★ Multi-year and adaptive | ★★★ Indeterminate | ★★★ Indeterminate | ★★★ ⁵¹ Indeterminate | ★ Annual/seasonal |
| Consistency over time | ★★★★ Authorizes ⁵² year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection |

⁴⁵ ORS § 506.755(1).

⁴⁶ *Id.* (2)-(3).

⁴⁷ See generally ORS ch. 508, 509, 511.

⁴⁸ ORS §§ 622.220.

⁴⁹ Oregon Department of Fish and Wildlife, 2013 Oregon Sport Fishing Regulations at 101-107.

⁵⁰ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

⁵¹ Dedications of state lands to the system are presumed permanent, with a public process for termination; dedications of private lands are revocable by the landowner. Oregon Natural Areas Plan (2010), at 15-16.

⁵² Legislature adopted OPAC’s recommendations and directed state agencies to implement them by rule.

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|---|--|---|---|---|--|
| Habitat protection | ★★★★ | ★★★★ | ★★★★ | ★★★★ | ★ |
| | Habitat protection | Habitat protection | Habitat protection | Representative or multiple habitats | Species-specific |
| Sector | ★★★★ | ★★★★ | ★★★★ | ★★★★ | ★ |
| | Authorizes multi-sector protection | Authorizes multi-sector protection | Authorizes multi-sector protection | Authorizes multi-sector protection | Authorizes single-sector protection |
| Enforcement | ★★ | ★ | ★ | | ★ |
| | Some MPA-specific enforcement | No MPA-specific enforcement | No MPA-specific enforcement | Voluntary, with assistance and incentives | No MPA-specific enforcement |
| Extent (scope) | ★★★★ | ★★ | | ★★★★ | ★★ |
| | Multi-site, potential expansion ⁵³ | Planning authority, priority sites described | Planning authority, local designation (see below) | Multi-site, potential expansion | Multi-site, no specific expansion mechanism |
| Process for designation or expansion | ★★★★ | ★★ | ★★ | ★★★★ | ★★ |
| | Specific public process for MPA expansion | No MPA-specific public process | No MPA-specific public process | Petition for natural area expansion | No MPA-specific public process |

Local Authority for Marine Protection

Summary of Local Authority

Oregon’s statewide planning goals (above) ultimately must be implemented in local comprehensive land-use plans. Coastal counties and cities are to address the goals related to estuaries, shorelands, beaches and dunes, and ocean resources. Estuarine planning and management in particular has been cited as a potential example of area-based marine protection at the local level.

| | Statewide Land-Use Planning, Goals 16 through 19 |
|-------------------------------------|---|
| Legal requirement | Requires coastal counties and cities to include coastal resources in their land-use plans |
| Citation | ORS ch. 197 (1973) |
| Designation authority | Coastal counties and cities |
| Management & enforcement | Coastal counties and cities |

⁵³ No expansion will be considered until after the 2023 evaluation and report to the State Legislature.

| | Statewide Land-Use Planning, Goals 16 through 19 |
|---------------------------|--|
| authority | |
| Jurisdiction & boundaries | Estuaries, coastal lands, beaches and dunes, ocean resources |
| Prohibited uses | |
| Permitted uses | <p>Within estuaries, two levels of protection:</p> <ul style="list-style-type: none"> • “Natural” management units: low-intensity recreation, research, conservation and restoration, bridges, no-fill aquaculture • “Conservation” management units: above plus high-intensity recreation, mining, dredge and fill for aquaculture⁵⁴ |

Comprehensive Local Land-Use Planning

As described above, Oregon’s statewide land-use planning law spells out four goals related to the ocean and coast: Goal 16 on estuarine resources, Goal 17 on coastal shorelands, Goal 18 on beaches and dunes, and Goal 19 on ocean resources and issues of federal/state consistency.⁵⁵ Most relevant here, under Goal 16 cities and counties must include “estuary management plans” in their comprehensive plans. For each estuary, these plans designate geographic management units that have varying degrees of protection, ranging from “natural” management units, through “conservation” management units, down to “development” management units, forming “a ‘system’ of state-level marine managed areas.”⁵⁶

The designations were made with stakeholder participation and scientific input; however, they have not been updated since the late 1970s, and there is no special enforcement procedure beyond the local governments’ general responsibility to enforce their comprehensive land-use plans.⁵⁷ As a result, the National MPA Center notes that “[c]itizens, state agencies, and nongovernmental organizations play an important role in reporting violations and countering proposals” within the estuarine areas.⁵⁸

Evaluation of Local Authorities

| FACTORS | Statewide Land-Use Planning, Goals 16 through 19 |
|-----------------------|--|
| Legal regime | <div style="text-align: right;">★ ★ ★</div> Planning |
| Ocean jurisdiction | <div style="text-align: right;">★ ★</div> Estuarine |
| Durability | <div style="text-align: right;">★ ★</div> Indeterminate |
| Consistency over time | <div style="text-align: right;">★ ★ ★</div> Authorizes year-round protection |

54 The Oregon Estuary Plan Book, <http://www.inforain.org/oregonestuary/index.html>, at 6.

55 Coastal States Organization/National Marine Protected Areas Center, “Oregon’s Estuary Management Plans/Natural and Conservation Management Units,” in Case Studies of State-Level Marine Managed Area Systems (May 2004), at 14. The National MPA Center focused on the Goal 16 estuarine resources in its case study of Oregon’s marine managed areas.

56 Id.; see Oregon Estuary Plan Book at 5-6.

57 National MPA Center, “Oregon’s Estuary Management Plans,” at 14-15.

58 Id. at 15.

| | | |
|---|---------------------------------------|-----|
| Habitat protection | Habitat protection | ★★★ |
| Sector | Authorizes multi-sector protection | ★★★ |
| Enforcement | No MPA-specific enforcement | ★ |
| Extent (scope) | Estuary-by- estuary, local management | ★ |
| Process for designation or expansion | No MPA-specific public process | ★★ |