

**Routine Program Change  
Seeking to Incorporate a Geographic Location Description  
and Amend the Listed Federal License and Permit Activities  
Of the Oregon Coastal Management Program**

**July 28, 2015**

**Introduction**

The Oregon Department of Land Conservation and Development (DLCD) seeks approval from the National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management (OCM) to update the listed federal license and permit activities that DLCD wishes to review for consistency with the Oregon Coastal Management Program (OCMP) and incorporate a Geographic Location Description (GLD) into the OCMP. DLCD requests OCM's concurrence that the amendment is a Routine Program Change to the OCMP.

15 C.F.R. 930.53 requires state coastal management programs to develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the state coastal management program. 15 C.F.R. 930.53(c) provides that after OCM has approved the initial list, the state agency may amend the list following consultation with the affected Federal agencies, pursuant to the program change requirements of 15 C.F.R. part 923, subpart H. This analysis identifies and describes the GLD and changes to the list, outlines DLCD's consultation with affected federal agencies, and explains why the update constitutes a Routine Program Change as described in 15 C.F.R. Part 923, Subpart H.

**Proposed Changes to the List of Federal License and Permits that DLCD will Review for Consistency**

DLCD proposes to make a number of changes to the federal consistency license and permit list. Most of the changes are clarifications and minor "housekeeping" type edits, such as adding a statutory citation or updating a federal agency name. Several changes are more substantive, proposing to either add or remove licenses or permits to the list. The analysis below summarizes the substantive changes, organized by federal agency. Two copies of the proposed changes are attached – one copy shows proposed changes in underline/strikethrough format; the other copy shows the clean text of the proposed final list.

**1. Environmental Protection Agency (EPA)**

**Remove:**

Permits for at-sea incineration of chemical or toxic wastes.

DLCD proposes to remove this listed permit because the EPA does not have a general permit for at-sea incineration. Rather, the EPA will consider proposed at-sea incineration actions under Section 102 of the Marine Protection, Research and Sanctuaries Act of

1972 (MPRSA). Permits and licenses required under Section 102 of the MPRSA remain on DLCD's approved federal consistency list.

## 2. Bureau of Ocean Energy Management (BOEM)

Falling under the minor housekeeping category, DLCD proposes to update the list to reflect that the Minerals Management Service is now the Bureau of Ocean Energy Management. Regarding substantive changes, DLCD proposes the following changes:

### Add:

Issuance or approval of leases, right-of-way or right-of-use and easement grants, Site Assessment Plans, Construction and Operations Plans, and General Activities Plans for renewable energy development pursuant to the OCSLA. (43 U.S.C. §§ 1331 et seq.; 43 U.S.C. § 1337(p)(3); implementing regulations at 30 CFR Part 585)

DLCD proposes this addition to the list because permits and licenses for the siting, construction, and operation of marine renewable energy projects may affect coastal uses and resources within Oregon's coastal zone. The marine renewable energy industry is continuously evolving, with unique technologies and devices designed to extract power from wind, waves, and ocean currents. A sampling of technology types includes point absorbers, attenuators, oscillating water columns, wave surge converters, and overtopping devices, as well as offshore wind turbines and platforms. For purposes of this listing, marine renewable energy development includes any existing or future renewable energy technologies that produce energy using the hydrokinetic, water column pressure, wind, or hydrothermal properties of the marine environment.

While the technologies are diverse and coastal effects will vary with the specific type and scale of development of each technology, marine renewable energy development will have the potential to affect coastal uses such as commercial and recreational fishing, boating and navigation, submarine cables, aesthetic (visual) resources, recreational use of the ocean, and scientific research. Section 3.D of the accompanying Geographic Location Description request contains an extensive analysis of the resource uses occurring in Oregon's territorial sea and offshore waters, the state's interest in those resource uses, and the reasonably foreseeable effects that marine renewable energy development could have on Oregon's coastal zone. Briefly, reasonably foreseeable effects include impacts resulting from:

- The physical presence of the devices and associated moorings and electric transmission lines;
- Movement or other mechanical actions of devices in the water;
- Energy removal (reduction in wave action that may occur shoreward of wave energy devices);
- Potential chemical exposure resulting from leaching or chipping of anti-fouling paints or other coatings on the devices, and spills or leaks of chemicals that may occur during construction, operations, or maintenance;

- Acoustic generation (noise due to moving components, operation of internal components, and action of waves or wind chop against the device); and
- Electromagnetic field generation.

**Revise:**

Issuance or approval of leases, exploration plans, development and production plans, and other authorizations, as appropriate<sup>1</sup>, pursuant to the Outer Continental Shelf Lands Act (OCSLA) related to OCS conventional energy and mineral development. (43 U.S.C. §§ 1331 et seq.)

<sup>1</sup>For example, geological and geophysical exploration permits issued to survey for oil and gas resources on OCS lands, permitted by BOEM pursuant to 30 CFR 551.

This amendment refines and replaces the previous entry that listed “[p]lans for the exploration, development, and production in areas leased under the OCS Lands Act.” The updated language, which DLCD developed in consultation with BOEM, clarifies the specific authorizations that will trigger a federal consistency review.

**Revise:**

Permits to drill, rights-of-use, rights-of-way, and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to the Outer Continental Shelf Lands Act; explorations and development plans, and any other permits or authorizations granted for activities described in detail in OCS exploration, development, and production plans (43 U.S.C. §§ 1334 et seq.).

This amendment refines and replaces the previous entry that listed “permits and licenses required for offshore drilling, mining, and development.” The amendment also adds a citation to the Outer Continental Shelf Lands Act.

### 3. Federal Energy Regulatory Commission

**Add:**

Permits and licenses required for marine hydrokinetic projects pursuant to the Federal Power Act (16 U.S.C. §§ 792-823a; implementing regulations at 18 C.F.R. Parts 4 and 5).

DLCD proposes this addition to the list because permits and licenses for the siting, construction, and operation of marine hydrokinetic projects may affect coastal uses and resources of Oregon’s coastal zone. For purposes of this listing, marine hydrokinetic projects include any existing or future marine renewable energy technologies that produce energy using the hydrokinetic properties of the marine environment (i.e. energy generated from the motion or flow of waves, tides, or ocean currents). Please see above and the accompanying Geographic Location Description for a listing and analysis of the reasonably foreseeable effects.

**Revise:**

Permits and licenses required for hydro-electric facility siting and transmission lines pursuant to the Federal Power Act (16 U.S.C. §§ 792 to 823a).

This entry previously referred to “power plant” siting and transmission lines. The amendment specifies the type of power (hydro-kinetic), and provides a legal citation to the Federal Power Act.

**Revise:**

Certificates, orders, licenses and exemptions for construction and operation of terminal and interstate facilities needed to import or export natural gas pursuant to Sections 3 and 7 of the Natural Gas Act (15 U.S.C. § 717f).

This proposed amendment combines two previous entries: 1) permits and licenses required for interstate pipelines, and 2) licenses and exemptions for construction and operation of facilities needed to import or export natural gas. The amendment also provides a legal citation to the Natural Gas Act.

**Department of Homeland Security – U.S. Coast Guard**

**Add:**

**Determination of Approval of Private Aids to Navigation under 33 C.F.R. Parts 62 and 66.**

DLCD proposes to add the U.S. Coast Guard authority that requires any offshore development to provide a plan, and install devices, to ensure the navigational safety of mariners in proximity to the facility. The USCG determination typically requires specific lighting and other measures be installed according to their guidelines. This federal action is listed as one of the federal authorities in the accompanying Geographic Location Description which contains an analysis of the reasonably foreseeable effects.

**Federal Agency Comments**

On February 20, 2014, DLCD sent letters to the heads of the FERC, BOEM, the U.S. Coast Guard, EPA, and the Surface Transportation Board, as well as to relevant field staff. The letters informed the agencies of the proposed changes, and invited questions, comments, or concerns regarding the updated list.

In a letter dated March 17, 2014, Mr. David Allnutt, Director of the EPA Region 10 Office of Ecosystems, Tribal and Public Affairs, responded on behalf of Administrator Gina McCarthy, concurring with DLCD’s proposed removal of permits for at-sea incineration of chemical or toxic wastes. Mr. Allnutt confirmed that EPA does not have a general permit for at-sea incineration, and would consider such an action under the regulations and policies of Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.

In a letter dated May 19, 2014, BOEM noted that certain individual permits DLCD proposes listing for consistency review (listed in Item B) are captured within the plans that lessees provide to BOEM prior to authorization of any offshore activities and therefore do not require consistency review on their own merit. DLCD respectfully disagrees and requests to review the individual permits in order to ensure full consistency with the OCMP.

The regional command of the U.S. Coast Guard contacted the department by phone to review the purpose of the letter and discuss what, if any, response they may submit. The department confirmed that the purpose of listing the USCG authorization was to address concerns related to maintaining safe navigation in the vicinity of any future marine renewable energy facilities in federal waters. The USCG verbally affirmed its role in ensuring safe navigation, but did not submit a comment letter to the department.

FERC did not comment.

### **This Action is a Routine Program Change**

Updating the listed federal permit and license activities that DLCD will review for consistency with the OCMP does not substantially alter any of the five program areas detailed in 15 CFR 923:

#### **1. Uses subject to management (Subpart B)**

This action does not substantially change the uses that the OCMP specifies as subject to management. Upon approval in 1977, the OCMP included energy production as a use subject to management by the state's coastal program. As the state's designated coastal management agency, DLCD has managed traditional energy production (electric transmission lines, gas pipelines, etc.) by reviewing federal licenses and permits for consistency with the state's enforceable policies. The addition of BOEM and FERC marine renewable energy authorizations reflects the evolving state of energy production in Oregon's territorial sea and the federal waters adjacent to Oregon's territorial sea, and enables DLCD to continue to respond to energy production actions proposed under the current federal regulatory framework. This action also does not change the planning process or enforceable policies applicable to energy facilities located in or which may significantly affect Oregon's coastal zone. Adding BOEM and FERC marine renewable energy authorizations to the list of federal licenses and permits DLCD will review for consistency with the OCMP further details the type of energy production subject to management, but does not substantially change the uses subject to management.

#### **2. Special management areas (Subpart C)**

This action does not change the criteria for designating areas of particular concern, or areas for preservation or restoration.

#### **3. Boundaries (Subpart D)**

This action does not change Oregon's inland or seaward coastal zone boundary, nor does it change the status of excluded lands.

#### **4. Authorities and organization (Subpart E)**

This action does not substantially change Oregon’s authority or organization, nor does it alter Oregon’s administration of the OCMP. It does not add or change any enforceable policies. As discussed above, the addition of BOEM and FERC marine renewable energy authorizations reflects the evolving state of energy production in Oregon’s territorial sea and the federal waters adjacent to Oregon’s territorial sea, and enables DLCD to continue to respond to energy production actions proposed under the current federal regulatory framework using existing enforceable policies and federal consistency review procedures.

#### **5. Coordination, public involvement and national interest (Subpart F)**

This action does not change any coordination, public involvement, or national interest provisions of the OCMP. The coordination of state agencies, affected local governments and tribes with federal agencies, related to the federal authorization of marine renewable energy development, is facilitated through the BOEM Oregon OCS Marine Renewable Energy Task Force. The intergovernmental task force operates under a charter to provide input into BOEM’s decision-making process on issues related to renewable energy activities on the OCS off the coast of Oregon. Authorization for the task force is derived under 43 U.S.C. §1337(p)(7), by which BOEM must provide for the coordination and consultation with the Governor of any state or the executive of any local government that may be affected by a renewable energy lease, easement or right-of-way on the OCS.