

Oregon Territorial Sea Plan

PART FIVE:

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

PART FIVE of the Oregon Territorial Sea Plan 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.¹ Renewable ocean energy facilities development may present opportunities to apply technologies that rely on wave, wind, current or thermal energy, that may potentially reduce the environmental impact of fossil fuels. If developed in a responsible and appropriate manner, in accordance with the requirements of this Part and other applicable state and federal authorities, renewable ocean energy may help preserve Oregon's natural resources and enhance our quality of life.

A. Renewable Energy Facilities Development

1. Background

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

State agencies, including the Oregon Departments of State Lands, Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Water Resources, Energy, and Geology and Mineral Industries, need specific policies and standards for considering the siting and regulation of renewable energy facility development in the Oregon territorial sea. ~~The State also needs specific policies and standards to guide federal agencies in~~

the siting and regulation of renewable energy facilities development located in federal waters adjacent to the Oregon territorial sea.²

NOTE: Notwithstanding Part One, paragraph F.1.b, the following policies and implementation requirements are mandatory. Decisions of state ~~and federal~~ agencies with respect to approvals of permits, licenses, leases or other authorizations to construct, operate, maintain, or decommission any renewable energy facility to produce, transport or support the generation of renewable energy within Oregon's territorial waters and ocean shore must comply with the requirements mandated in the Oregon Territorial Sea Plan. ~~The enforceable policies of the Territorial Sea Plan and the Oregon Coastal Management Program are applicable to those federal actions that affect Oregon's coastal zone and are subject to the federal consistency requirements of the federal Coastal Zone Management Act.~~

2. Policies

The following policies apply generally to renewable energy facilities within the Oregon Territorial Sea, and establish the guiding principles for the implementation requirements listed in section B. When making decisions to authorize the siting, development, operation, and decommissioning of renewable energy facilities within the Oregon territorial sea, ~~and state and federal~~ agencies shall³:

- a. Maintain and *protect* renewable marine resources (*i.e.* living marine organisms), ecosystem integrity, *marine habitat* and *areas important to fisheries* from adverse effects that may be caused by the installation or operation or removal of renewable energy facility by requiring that such actions:
 - 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the marine ecosystem and coastal communities, and give first priority to the conservation and use of renewable marine resources;
 - 2.) Minimize effects by limiting the degree or magnitude of the action and its implementation;
 - 3.) Rectify or mitigate the effects that occur during the lifetime of the facility by monitoring and taking appropriate corrective measures through adaptive management; and
 - 4.) Restore the natural characteristics of a site to the extent practicable when the facility and structures are decommissioned and removed.
- b. Protect marine renewable resources, the biological diversity and functional integrity of marine ecosystem, important marine habitat, areas important to fisheries, navigation, recreation and aesthetic enjoyment, ~~as required by Statewide Planning Goal 19.~~
- c. Promote direct communication and collaboration between an applicant for a state or federal authorization for the siting, development and operation of renewable energy facilities and affected ocean users and coastal communities to reduce or avoid conflicts.

Agencies will strongly encourage applicants to engage with local, state and federal agencies, community stakeholders, tribal governments and affected ocean users in a collaborative agreement-seeking process prior to formally requesting authorization to initiate a project.⁴

- d. Limit the potential for unanticipated adverse impacts by requiring, ~~as necessary, when information is insufficient~~, the use of pilot projects and phased development to collect data and study the effects of the development on the affected marine resources and uses.
- e. Encourage the research and responsible development of ocean-based renewable energy sources including wave, tidal, and wind that meet the state's need for economic and affordable sources of renewable ocean energy.

B. Implementation Requirements

State ~~and federal~~ agencies shall apply the following implementation requirements when considering a proposal for the placement or operation of a renewable energy facility development within the Oregon Territorial Sea. Regulating agencies shall comply with the standards and procedural requirements in Part Five of the Territorial Sea Plan as prescribed below. This includes the cables, connectors or other transmission devices that connect, anchor, support or transmit energy between the separate components within a renewable energy facility. The requirements in Part Four, Uses of the Seafloor for Telecommunication Cables, Pipelines, and other Utilities, will apply to the utility cables that transmit the electrical energy from the renewable energy facility to the on-shore substation.⁵ The requirements in Part Two, Making Resource Use Decisions, Sections A and B, will not apply to the evaluation, siting or operation of renewable energy development or other related structures, equipment or facilities.

1. Siting: areas designated for renewable energy facilities development.

a. In State Waters:

Pursuant to the requirements for amending the Territorial Sea Plan under ORS 196.471, to carry out the policies of the Oregon Ocean Resources Management Act and consistent with the statewide planning goals, the Land Conservation and Development Commission ~~will has~~ designated areas of the [Oregon](#) territorial sea appropriate for the development of renewable energy facilities, ~~and established the review standards for siting projects within those designated areas~~.⁶ (See appendix C map). Renewable energy facilities development of the state lands of the territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of the Ocean Shore State Recreation Area) shall be sited within the areas designated for that use so as to avoid, minimize or mitigate the adverse effects of that development, and to protect: renewable marine resources, biological diversity and functional integrity of marine ecosystem, important marine habitat, and areas important to fisheries, as defined in Statewide Planning Goal 19 Ocean Resources.

b. In Federal Waters:

The Department of Land Conservation and Development will review federal decisions to permit, license, or otherwise authorize renewable energy facilities development within the waters and seafloor of the outer continental shelf adjacent to the Oregon Territorial Sea for consistency with the Oregon Territorial Sea Plan and the applicable enforceable policies of the Oregon Coastal Management Program—pursuant to NOAA’s CZMA federal consistency regulations at 15 C.F.R. part 930.⁷ ~~If a federal actions, including the issuance of any federal authorizations, is subject to Oregon CZMA review, it that affect any land or water use or natural resources of the Oregon Coastal Zone shall be supported by the information required in NOAA’s regulations at either 15 C.F.R. §§ 930.39, 930.58 or 930.76. environmental studies and analysis as prescribed below, to ensure compliance with the enforceable policies of Oregon Territorial Sea Plan and the Oregon Coastal Management Program.~~⁸

2. State Agency Review Process

Pursuant to ORS 196.485 and ORS 197.180, state agencies shall apply the policies and provisions of the Oregon Ocean Resources Management Plan and Territorial Sea Plan, and Goal 19 Ocean Resources as required to comply with State Agency Coordination Programs (OAR chapter 660, divisions 30 and 31).

The Department of State Lands shall coordinate the review of requests for approvals of leases, temporary use permit, easements and removal-fill in consultation with the Departments of Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Water Resources, Geology and Mineral Industries, Energy, coastal local governments, and tribal governments as appropriate. These agencies, with the addition of the invited regulating federal agencies, will constitute the joint agency review team (JART) described in subsection B.3 below. Pursuant to the federal Coastal Zone Management Act, the Department of Land Conservation and Development will review the consistency certification together with required necessary data and information submitted by the applicant for federal authorization for a renewable energy facilities development to ensure the project is consistent with federally-approved enforceable policies of the Oregon Coastal Zone Management Program, including the Oregon Territorial Sea Plan.

3. Project Review Process and **Coordination**

The Department of State Lands (DSL) shall convene the JART, in order to facilitate the coordination of state and federal agencies as they apply their separate regulatory, proprietary, or other authorities to the review of a proposed renewable energy facility development. Applicable federal agencies will be invited to participate on the JART. ~~The team~~ JART shall consist of the state and invited federal agencies with regulatory or planning authority applicable to the proposed project and location; ~~and DSL shall also request that~~ affected local jurisdictions, if any, participate in the JART review and DSL may also invite local or statewide interest groups and advisory committees to participate. The ~~joint agency review team~~ JART will coordinate the review process, and comment on the adequacy of the resource inventories and effects evaluations required under subsection B.4 (Resource Inventory and Effects Evaluation Standards), below, and NEPA environmental assessments and environmental impact statements. The JART will decide if the proposed

Comment [PK1]: I've made some preliminary suggestions for changes to this section for discussion purposes.

renewable energy facility meets the applicable standards and screening criteria associated with the area.

The ~~joint agency review team~~JART will also consider the adequacy of the information provided for the operation plan, as required under section C. (Operation Plan Development) below, including the monitoring requirements, mitigation measures, adaptive management plans, construction and operational performance standards, or any other special conditions that a regulating state agency may apply pursuant to the lease, permit, license or other authorization.

DSL shall require that an applicant provides documentation verifying their communication and coordination efforts with local communities, interest groups and advisory committees. Those efforts shall, at a minimum, include information on the proposed project operation protocols, response to emergencies and procedures for on-going communication as specified in section C (Operation Plan Development), below.

4. Resource Inventory and Effects Evaluation Standards

~~Regulating agencies will require~~As required by this subsection, the following resource inventory and effects evaluation is required from the applicant to ~~provide a resource inventory and effects evaluation, as required by this subsection,~~ prior to ~~the regulating agencies~~ making any decision. State agencies will assist the applicant by providing readily available data and other information as applicable to the review process. ~~The State recognizes that some of the-~~ Relevant inventory information will be included in the application(s) to state and/or federal agencies; rather than duplicate the information in the inventory, by the applicant may provide the location in the application where the particular item is located. ~~be used to meet the requirements of this section.~~

a. Sufficiency of Inventory and Evaluation

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

b. Purpose of the Effects Evaluation

The purpose of the effects evaluation is to determine whether the proposed actions can meet the policies and standards for the protection of resources, resource users and coastal communities referred to above in subsection A.2 (Policies), above. The evaluation will help identify where the applicant needs to address deficiencies. The regulating agency will use the evaluation to develop specific measures for environmental protection and mitigation, measures to protect ocean uses, monitoring, and adaptive management.

c. Use of Available Environmental Information

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

d. Inventory Content

To evaluate the magnitude of the proposed project, the likelihood of the effects of the project, and the significance of the resources and uses that the project may affect, regulating agencies shall require that the applicant include consideration of the following factors in the inventory:

- 1) Proposed factors associated with the development, placement, operation, maintenance, and decommissioning of the project:
 - A) Location (using maps, charts, descriptions, etc.);
 - B) Numbers and sizes of equipment, structures;
 - C) Methods, techniques, activities to be used;
 - D) Transportation and transmission systems needed for service and support;
 - E) Materials to be disposed of and method of disposal;
 - F) Physical and chemical properties of hazardous materials, if any, to be used or produced;
 - G) Navigation aids; and
 - H) Proposed time schedule.

- 2) Location and description of all affected areas, including, but not limited to:
 - A) Site of the renewable energy facility;
 - B) Adjacent areas that may be affected by physical changes in currents and waves caused by the facility;
 - C) Utility corridor transiting [the Oregon](#) territorial sea and ocean shore; and
 - D) Shoreland facilities.

- 3) Physical and chemical conditions including, but not limited to:
 - A) Water depth;
 - B) Wave regime;
 - C) Current velocities;
 - D) Dispersal, horizontal transport, and vertical mixing characteristics;
 - E) Meteorological conditions; and
 - F) Water quality.

- 4) Bathymetry (bottom topography) and Shoreline Topography (LIDAR (Light Detection And Ranging))

- 5) Geologic structure, including, but not limited to:
 - A) Geologic hazards, such as faults or landslides of both marine and shoreline facility areas;
 - B) Mineral deposits;
 - C) Seafloor substrate type; and
 - D) Hydrocarbon resources.

- 6) Biological features, including, but not limited to:
 - A) Critical marine habitats (see Appendix A);
 - B) Other marine habitats;
 - C) Fish and shellfish stocks and other biologically important species;

- D) Recreationally or commercially important finfish or shellfish species;
 - E) Planktonic and benthic flora and fauna;
 - F) Other elements important to the marine ecosystem; and
 - G) Marine species migration routes.
- 7) Cultural, economic, and social uses affected by the project including, but not limited to:
- A) Commercial and sport fishing;
 - B) State or Federally protected areas;
 - C) Scientific research;
 - D) Ports, navigation, and Dredge Material Disposal sites;
 - E) Recreation;
 - F) Coastal Communities Economy;
 - G) Aquaculture;
 - H) Waste water or other discharge;
 - I) Utility or pipeline corridors and transmission lines;
 - J) Military Uses; and
 - K) Aesthetic Resources.
- 8) Significant historical, cultural or archeological resources.
- 9) Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project.

e. Written Evaluation.

Regulating agencies shall require the applicant to submit a written evaluation of all the reasonably foreseeable adverse effects associated with the development, placement, operation, and decommissioning of the proposed renewable energy facility. See, e.g., 15 C.F.R. § 930.58(a)(1)(ii) requiring an effects analysis for CZMA purposes. For purposes of the evaluation, the submittal shall base the determination of “reasonably foreseeable adverse effects” on scientific evidence. The evaluation shall describe the potential short-term and long-term effects of the proposed renewable energy facility on marine resources and uses of the Oregon territorial sea, continental shelf, onshore areas and coastal communities based on the inventory data listed in paragraph B.4.d above and the following considerations:

1) Biological and Ecological Effects:

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

- A) The time frames/periods over which the effects will occur;
- B) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;

- C) Maintaining populations of threatened, endangered, or sensitive species;
- D) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
- E) The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents.

2) Current Uses:

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

- A) Local and regional economies;
- B) Archeological and historical resources; and
- C) Transportation safety and navigation.

3) Natural and Other Hazards

Evaluate the potential risk to the renewable energy facility, in terms of its vulnerability to certain hazards and the probability that those hazards may cause loss, dislodging, or drifting of structures, buoys, or facilities. Consider both the severity of the hazard and the level of exposure it poses to the renewable marine resources and coastal communities. Hazards to be considered ~~should~~ shall include the scouring action of currents on the foundations and anchoring structures, slope failures and subsurface landslides, faulting, tsunamis, variable or irregular bottom topography, weather related, or due to human cause.

4) Cumulative Effects

Evaluate the cumulative effects of a project, including the shoreland component, in conjunction with effects of any prior phases of the project, past projects, other current projects, and probable future projects.⁹ The evaluation ~~should~~ shall analyze the biological, ecological, physical, and socioeconomic effects of the renewable energy facility development and of other renewable energy facility projects along the Oregon coast, while also taking into account the effects of existing and future human activities and the regional effects of global climate change.

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

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

B) The Joint Agency Review Team ~~may shall~~ determine the ~~scope adequacy~~ of the cumulative effects analysis ~~through a set of guidelines developed by JART that~~ regulating agencies ~~will shall~~ require of the applicant for phased development projects as described below under subparagraph B.4.f.3 and subsection C.1. The JART will make a determination from the analysis to inform the location, scale, scope and technology of subsequent stages of the phased development project; ~~to provide input on any other factors it determines to be relevant; or both. The renewable energy project developer will conduct a comprehensive cumulative effects analysis at the initial phase of a development designed to inform future phases of development.~~

5) Adaptive Management

~~The State~~ regulating agencies and project developer ~~will shall~~ use adaptive management ~~or a similar process and monitoring~~ to evaluate the project at each subsequent phase; the intent of such evaluation is to inform the design, installation and operation of successive phases.

f. Insufficient/Incomplete Information

An applicant may not be able to obtain or provide the information required by subsection B.4 (Resource Inventory and Effects Evaluation Standards), above, due to the lack of data available about the effect that the proposed development may have on environmental resources and uses. When a state regulating agency determines that the information provided by the applicant is not sufficient or complete enough to fulfill the requirements of subsection B.4,¹⁰ the agency has the following options:

1) Agency Discretion

~~The A State~~ regulating agency may terminate the state permit decision-making process or suspend the state permit process until the applicant provides the information.¹¹ ~~For purposes of CZMA federal consistency reviews, NOAA's regulations at 15 C.F.R. part 930 determine when the CZMA review periods start and ends; a state cannot start, terminate or suspend the CZMA review independent of NOAA's requirements.~~

2) Pilot Project

The state regulating agency may recommend that an applicant conduct a pilot project to obtain adequate information and data and measure the effects. Or, under the CZMA, Alternatively, the State may issue a CZMA "conditional concurrence" under 15 C.F.R. § 930.4 and include a condition that in order to be consistent with the information requirements of the Oregon Territorial Ssea Plan that a pilot project must first be conducted, or, if the State objects under the CZMA, may recommend a pilot project as an alternative to the proposed project. Pilot projects are renewable energy facility developments which are removable or able to be shut down quickly, are not located in sensitive areas, and are for the purpose of testing new technologies or locating appropriate sites.¹² The agency's decision to allow the use of a pilot project is for the purpose of obtaining the data and information necessary

to fulfill the requirements of subsection B.4., and shall be based on the following approval criteria:

- A) The exclusive purpose of the pilot project shall be to provide information on the performance, structural integrity, design and environmental effects of a specific renewable energy technology or its supporting equipment and structures.
- B) The applicant shall complete adequate inventories of baseline conditions, as required by paragraph B.4.d (Inventory Content) above, prior to conducting the pilot project.
- C) The risk of adverse effects from the pilot project shall be insignificant, because:
 - 1. of low probability of exposure of biological communities and habitats;
 - 2. of low sensitivity of the biological communities and habitats to the exposure; or
 - 3. the effects of exposure to sensitive communities and habitats will be insignificant.
- D) The pilot project shall not adversely affect any “important marine habitat” or “critical marine habitat” (see Appendix A: Glossary of Terms).
- E) The pilot project will have a term, not to exceed five years, and authorization for the project will include a standard condition requiring project alteration or shutdown in the event that an unacceptable level of environmental effect occurs.
- F) The pilot project shall avoid significant or long-term interference with other human uses of marine resources, and will require decommissioning and site restoration at expiration of the authorization period if federal and state authorization for a commercial renewable energy facility is not sought.
- G) All data shall be in the public domain subject to ORS 192.410 *et seq.*
- H) Work Plan: The applicant shall provide a written work plan which will include, but not be limited to the following:¹³
 - 1. A list of the information needed to satisfy the requirements of subsection B.4. above.
 - 2. Specific pilot project objectives to obtain the needed information and an explanation of how the study or test design will meet the objectives.
 - 3. Description of study or test methods to meet the objectives, such as:
 - (a) Literature review;
 - (b) Collection of any 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 to allow the effects of the proposed action to be separated from natural fluctuations in resources and habitats.
4. Supporting documentation demonstrating that the study design is scientifically appropriate and statistically adequate to address the research objectives.
5. Descriptions of how the data and analyses will be reported and delivered to the regulating agency for review and approval.

3) Phased Development

The State regulating agency may recommend that an applicant conduct a project as a phased development in order to obtain adequate information and data and to measure the incremental effects of each phase prior to further or complete build-out of the project. Alternatively, the State may issue a CZMA “conditional concurrence” under 15 C.F.R. § 930.4 and include a condition that in order to be consistent with the information requirements of the Oregon Territorial Ssea Plan that a phased- project must first be conducted, or, if the State objects under the CZMA, may recommend a phased project as an alternative to the proposed project.

Phased development projects are renewable energy facility developments which are limited in scale and area, but are designed to produce energy for commercial use. The applicant for a phased development project will need to comply with the requirements of subsection B.4. A regulating agency’s decision to allow the use of a phased development project is designed to allow for commercial energy production while obtaining certain data and information that are necessary to fulfill the requirements of subsection B.4., but can only be obtained through the monitoring and study of the effects of the development as it is installed and operated for a discrete period of time.

g. Test Facility

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

C. Operation Plan Development

The State regulating agency shall require the applicant to submit an operation plan as a condition of approval for a state ~~or federal~~ permit, license, lease or other authorization for renewable energy facility development. The operation plan must explain the procedures and mechanisms that the operator will employ so that the facility will comply with regulatory standards and other conditions of permit or license approval related to water and air quality, adverse environmental effects, maintenance and safety, operational failure and incident reporting. The operation plan shall be designed to prevent or mitigate harm or damage to the marine and coastal environment and at a minimum shall include the following information:

1. Phased Development Plan

A State regulating agency may require that a facility be developed in phases in order to determine whether the environmental effects of the structures and the operation of the

facility are consistent with the inventory and effects evaluation conducted under subsection B.4. The requirements for an operation plan listed in this section would apply to each stage of the phased development so as to account for any changes in design, technology or operation that may result from monitoring the initial phase of the operation. The ~~state and federal~~ joint agency review team (JART), as discussed in section B.3 will assist the developer in assessing the environmental effects of the initial phase and in determining what, if any, changes in the development and operation of future phases of the facility might be necessary to mitigate or prevent harm or damage to the marine ecosystem.

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

2. Facility Development Plan

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

- a. Structural and project design, materials used, anchoring and installation information;
- b. All cables and pipelines, including lines on project easements;
- c. A description of the deployment activities;
- 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

An 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~~ shall 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~~ shall include the following information:

a. Contingency Plan:

A plan 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~~ shall 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 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~~shall be required after any major geologic or meteorologic event to ensure continued operational safety and environmental protection.

c. Monitoring Plan:

A plan 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 shall 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 accurately document and quantify the short-term and long-term effects of the actions on the affected resources and uses.

Plans for monitoring ~~must~~shall 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~~shall 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~~shall 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 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 paragraph C.3.c (Monitoring Plan), above. The plan ~~will~~shall explain the processes for how adaptation measures are applied to the operation of the project. 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. The adaptive management plan will explain processes for how adaptation measures will be applied to the operation and management of the project. 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 to be protected from adverse effects and operational conflicts; and
- 7) Unanticipated cumulative effects.

4. Decommissioning Plan:

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

5. Financial Assurance Plan:

The applicant ~~must~~ shall provide a financial assurance compliance plan that describes their ability to comply with the state regulating agency requirements for financial assurance instruments to guarantee performance, and any other financial terms and conditions that may be applied. Wave energy facilities or devices shall comply with the requirements of ORS 274.867,¹⁷ and the implementing administrative rules of the Department of State Lands, OAR 141-140-0080 and OAR 141-140-0090.

6. Agreements:

Applicants ~~are required to~~ shall communicate with traditional ocean users and stakeholders with an interest in the area of the proposed project to address issues of concern.¹⁸ Applicants are encouraged to memorialize agreements with those ocean users and stakeholders on the specific actions that the applicant will take to address their issues of concern.

D. Northwest National Marine Renewable Energy Center Mobile Test Berth Site

Comment [PK2]: I've made some preliminary suggestions for changes to this section for discussion purposes only.

1. Test Berth Site Plan

The permanent Northwest National Marine Renewable Energy Center mobile test berth site is established at Newport, Oregon, to conduct short-term experimental testing of renewable energy technologies at the mobile test berth facility.

2. Test Berth Site Use

An application for a permit, license, or other authorization for the installation and ~~use~~ operation of the Northwest National Marine Renewable Energy Center mobile test berth site and facility, ~~are is~~ not subject to the requirements of sections B or C, above.

An experimental or test device or other structure that seeks permission for to use ~~at~~ the Northwest National Marine Renewable Energy Center mobile test berth facility or site, is required to obtain any applicable license, permit or authorization.

Appendix A: Definitions and Terms

As used in Part Five, unless the context requires otherwise, the following definitions shall apply:

Applicant: 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," or "project developer."

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 designation does not ~~is not intended to~~ limit the application of federal law regarding threatened and endangered species; or
 - 2.) "unique" (i.e. one of a kind in Oregon) habitat for scientific research or education within the Oregon territorial sea. (Territorial Sea Plan, Part Two)

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

Habitat: the environment in which an organism, species, or community lives. Just as humans live in houses, within neighborhoods, within a town or geographic area, within a certain region,

and so on, marine organisms live in habitats which may be referred to at different scales. (see also "critical marine habitat", "important marine habitat") (Territorial Sea Plan Appendix A: Glossary of Terms)

- 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.

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

Phased development projects: Renewable energy facility developments which are limited in scale and area, but are designed to produce energy for commercial use.

Project Developer: see "applicant" above.

Regulating agency or regulating agencies: 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.

Renewable Energy Facility or Facilities: 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" are used to describe any and all components of these developments.

Appendix B: Endnotes

¹ The state's renewable energy portfolio is described under ORS 469A.025, entitled "Renewable energy sources." ORS 469A.025(1) provides:

"Electricity generated utilizing the following types of energy may be used to comply with a renewable portfolio standard:

"(a) Wind energy.

"(b) Solar photovoltaic and solar thermal energy.

"(c) Wave, tidal and ocean thermal energy.

"(d) geothermal energy."

² Part One, subsections E.1 and E.2 of the Territorial Sea Plan provide a brief description of programs of certain state and federal agencies with regulatory, consultation or other authority or responsibility for management of ocean resources.

³ 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".

⁴ In its "Rules Governing the Placement of Ocean Energy Conversion Devices On, In or Over State-Owned-Land within the Territorial Sea", the Department of State Lands requires applicants to meet with the agency, as well as affected ocean users and other government agencies having jurisdiction in the Territorial Sea, prior to applying for a lease or temporary authorization. OAR 141-140-0040.

⁵ The manner in which federal agencies comply with the enforceable policies and information requirements contained in Goal 19 is governed by NOAA's CZMA Federal Consistency regulations at 15 CFR Part 930. Thus, the reference to "federal agencies" does not impose obligations on federal agencies that are in addition to those described in the CZMA and NOAA's regulations.

⁶ ORS 196.471, entitled "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."

⁷ Whether a particular federal license or permit activity proposed in federal waters is subject to Oregon review depends on whether the State has, pursuant to 15 C.F.R. § 930.53, (1) listed the federal authorization in the Oregon Coastal Management Program, and (2) the proposed listed activity falls within a NOAA-approved "Geographic Location Description" (GLD). If Oregon has not listed the activity and does not have a NOAA-approved GLD, the State can seek NOAA approval to review a project on a case-by-case basis as an "unlisted activity" pursuant to 15 C.F.R. § 930.54. If a federal action, including the issuance of any federal authorizations, is subject to Oregon CZMA review, it shall be supported by the information required in NOAA's regulations at either 15 C.F.R. §§ 930.39, 930.58 or 930.76.

⁸ The regulations for federal consistency with approved state coastal programs are prescribed in 15 C.F.R., Part 930. “Energy projects” are defined under 15 C.F.R. § 930.123(c) to mean “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.”

⁹ Under the National Environmental Policy Act (NEPA), “cumulative impacts” means “the impact on the environment 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

~~¹⁰ One measure of whether the information provided by an applicant is sufficient are the federal consistency regulations under 15 CFR §930.58 (a), which provides: “The applicant shall furnish the State agency with necessary data and information along with the consistency certification.”~~

¹¹ For purposes of CZMA federal consistency reviews, NOAA’s regulations at 15 C.F.R. part 930 determine when the CZMA review periods start and ends; a state cannot start, terminate or suspend the CZMA review independent of NOAA’s requirements.

¹² Pilot Project has the same meaning as “Demonstration Project” 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. OAR 141-140-0020(7) defines “Demonstration Project” as “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.”

¹³ Pilot projects that are authorized under the standards and conditions of this subparagraph 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.

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 rule for “Biocriteria” at OAR 340-041-0011, which provides “Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.”

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. Under subsection (5)(e) of that rule, the holder of a temporary use authorization or lessee is required to:

“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 OAR 141-083-0850(6), which provides:

“If determined necessary by [DSL] 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 ORS 274.867 provides in part:

“(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.”

¹⁸ The Department of State Lands rule on Pre-Application Requirements, OAR 141-140-0040, provides:

“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.”