

Chapter 1 Purpose and Need

1.1 Introduction

Private landowners, corporations, State or local governments, or other non-Federal landowners who wish to conduct activities on their land that might incidentally harm (or "take") wildlife that is listed as endangered or threatened must first obtain an incidental take permit (ITP) from U.S. Fish and Wildlife Service (USFWS). As discussed in Section 1.2.2, "Purpose and Need for Action," take is generally defined as hunting, shooting, capturing, collecting or killing a protected species.

The Oregon Parks and Recreation Department (OPRD) has submitted an application to USFWS for an ITP in accordance with Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended. The issuance of an ITP from USFWS would provide OPRD with the long-term regulatory assurance that implementation of its coastal management responsibilities would comply with the ESA, while providing protection for the Pacific Coast population of the western snowy plover (snowy plover), a species listed as threatened under the ESA (Table 1-1).

Table 1-1. Listing Status of Pacific Coast Population of the Western Snowy Plover

Species Name	Listing Status		Federal Overseeing Agency
	Federal	State	
Western Snowy Plover (Pacific Coast population) (<i>Charadrius alexandrinus nivosus</i>)	Threatened	Threatened	USFWS

A habitat conservation plan (HCP) that documents compliance with Section 10 of the ESA must be submitted by OPRD for an ITP to be issued by USFWS (Section 1.2.2, “Endangered Species Act Section 10,” provides a list of the required components of an HCP). To meet those requirements, OPRD has prepared the *Western Snowy Plover Habitat Conservation Plan* (Oregon Parks and Recreation Department 2008).

Proposed issuance of an ITP by USFWS is a Federal action that may affect the human environment and is, therefore, also subject to review under the National Environmental Policy Act (NEPA). As part of the NEPA process, a Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS) and supporting HCP are required to be circulated for public review and comment. This FEIS analyzes OPRD’s request to USFWS for incidental take coverage of snowy plovers resulting from its management actions, as well as two alternative management strategies. Following a 30-day public review period on the FEIS, USFWS will prepare a Record of Decision (ROD) formally documenting its permit issuance decision.

1.2 Purpose and Need for Action

1.2.1 Purpose for Action

The purpose for this action is to allow USFWS to respond to the OPRD application for an ITP. If granted, the proposed ITP would authorize the incidental take of snowy plovers that may result from OPRD’s continued management of Oregon’s coastal resources.

Section 1.2.3, “Context,” details the background for OPRD’s action, and the activities proposed for incidental take coverage under the HCP.

Need for Action

The need for this action is to provide broader protection and conservation for snowy plovers, while allowing for long-term management of the portions of Oregon’s coast under OPRD jurisdiction. Technical discussions between the OPRD and USFWS during development of the HCP have resulted in specific criteria that must be satisfied before a decision can be reached on permit issuance. The determination as to whether the HCP has met these criteria will be made after the public has had an opportunity to comment on the DEIS, FEIS and HCP. The decision whether to issue the ITP will be based on USFWS’s NEPA and ESA compliance determinations. These determinations will be documented in the ESA Section 10 findings document, ESA Section 7 Biological Opinion, and NEPA ROD, which will be developed at the conclusion of the NEPA and ESA processes.

The following section describes how USFWS would likely determine whether the need for the action has been met with respect to species protection and conservation (in consideration of the requirements outlined in the ESA and NEPA).

Endangered Species Act Section 10

The ESA is intended to provide a means for protecting and conserving species listed as either endangered or threatened, and for conserving the ecosystems upon which listed species depend. To be protected under the ESA, a species must be listed by USFWS or the National Marine Fisheries Service (NMFS) as endangered or threatened. A species is considered endangered if it is determined to be in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is found that the species is likely to become endangered within the foreseeable future.

Section 9 of the ESA prohibits the take of an endangered species, where take is defined in the ESA to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” Section 10 of the ESA allows the Services to issue an ITP to a non-Federal entity for incidental take of a federally listed species, where “incidental take” is defined as take that is, “incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” Permit issuance criteria prescribed in 50 Code of Federal Regulations (CFR) 17.22(b)(2), 50 CFR 17.32(b)(2), and Section 10(a)(2)(B) of the ESA state:

- The taking must be incidental.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
- The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
- Other measures may be required as necessary or appropriate for the purposes of the HCP.

A conservation plan submitted in support of a Section 10 permit application must specify:

- the impact that will likely result from the taking;
- steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;
- alternative actions to such taking considered by the applicant, and the reasons why such alternatives are not proposed to be used; and

- other measures that may be required as necessary or appropriate for the purposes of the plan.

The evaluation of OPRD's ESA Section 10(a)(1)(B) application will be documented in a Section 10 findings document, which will be produced at the completion of the NEPA and ESA permit issuance processes. The result of the assessments will determine whether or not an ITP will be issued.

Endangered Species Act Section 7

Issuance of an ITP is also a Federal action subject to Section 7 of the ESA. Section 7(a)(2) requires all Federal agencies, in consultation with USFWS, to ensure that any action "authorized, funded, or carried out" by an agency is "not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification" of critical habitat. Although the provisions of Section 7 and Section 10 are similar, Section 7 and its regulations require several considerations in the HCP process, including an analysis of indirect effects, effects on federally listed plants, and effects on critical habitat.

The results of the Section 7 consultation are documented in biological opinions developed by USFWS. A biological opinion is generally produced near the end of the ESA permitting process, and documents conclusions regarding the likelihood of jeopardizing the continued existence of, or adversely modifying designated critical habitat for any listed species.

National Environmental Policy Act

NEPA is one of the primary laws governing the environmental protection process. It is a decision-making requirement that applies to proposals for Federal actions. The Council on Environmental Quality regulations define, "major Federal action" as those actions with, "effects that may be major and which are potentially subject to Federal control and responsibility," including, "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies."

NEPA states that any Federal agency undertaking a "major Federal action" likely to "significantly affect the human environment" must prepare an Environmental Impact Statement (EIS). An EIS must provide a "detailed statement" of the environmental impacts of the action, possible alternatives, and measures to mitigate adverse effects of the proposed actions. While NEPA does not mandate any particular result, it requires the agency to follow particular procedures in its decision-making process. The purpose of these procedures is to ensure the agency has before it the best possible information to make an "intelligent, optimally beneficial decision" and to ensure the public is fully apprized of any environmental risks that may be associated with the preferred action.

Issuance of an ITP under Section 10(a)(1)(B) is a Federal action subject to NEPA compliance. Although ESA and NEPA requirements overlap considerably, the scope of NEPA goes beyond that of the ESA by considering the impacts of a Federal action not only on fish and wildlife resources, but also on other resources such as water quality, socioeconomics, air quality, and cultural resources. The EIS process culminates in issuance of a ROD. The ROD documents the alternative selected for implementation, as well as any conditions that may be required, and summarizes the impacts expected to result from the action.

1.2.2 Context

The OPRD is pursuing an ITP from USFWS, using the HCP process with its regional perspective on species conservation, as a mechanism for compliance with the ESA. Over the next 25 years (the permit term proposed in the HCP), OPRD will engage in a number of management and regulatory activities along the coast of Oregon that could affect snowy plovers. Administration of ESA compliance activities for each of these actions on a project-by-project basis would likely be a less efficient process for both OPRD and USFWS, and would result in unpredictable beach use restrictions that could be required on Oregon's beaches to protect nesting populations of snowy plovers. A project-by-project approach would also be less effective for addressing issues on a regional scale.

Background

The OPRD is responsible for various management activities along most of the Oregon coast, including recreation management, general beach management, and management of natural resources, including snowy plovers. Since populations of snowy plover nest, roost, forage, and raise chicks on the sandy beaches of the Oregon Coast, OPRD must ensure that its management activities do not result in take of snowy plovers. In addition, OPRD must balance snowy plover management activities with its mandate to maintain the public's access to the ocean shore.

Currently, each year, in coordination with Federal agencies and at the request of State agencies and Curry County, OPRD restricts use of a portion of the Ocean Shore at six occupied snowy plover nesting areas during the snowy plover breeding season (March 15 to September 15) to minimize potential effects to nesting populations of snowy plovers. These seasonal use restrictions have been imposed since 1994, with such restrictions affecting anywhere from 0.5 miles (1994) to 19.8 miles (1998) of beach although access to and use of the wet sand areas are still available. Seasonal use restrictions limit recreational use and access in these specific areas, and vary unpredictably in scale and location.

As a result, OPRD, in collaboration with USFWS and ODFW, has prepared the *Western Snowy Plover Habitat Conservation Plan* (Oregon Parks and Recreation Department 2008), with a proposed 25-year term, to address potential effects on

snowy plovers resulting from OPRD management activities on the covered lands (see “Covered Lands” below for a description of the geographic boundaries of the areas covered under the HCP).

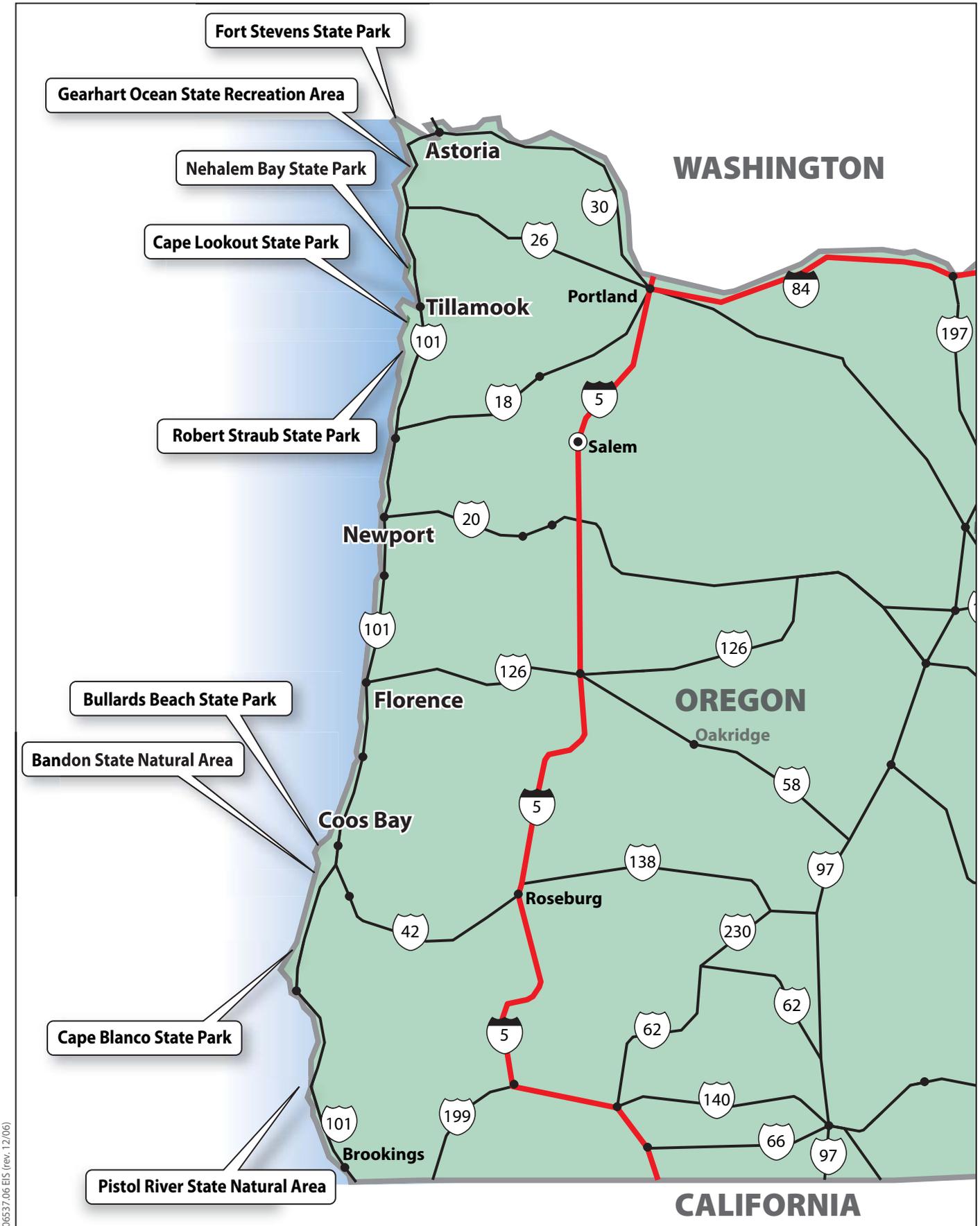
Snowy Plover Recovery Plan

USFWS released the *Western Snowy Plover Pacific Coast Population Draft Recovery Plan* (Recovery Plan) in 2001 (U.S. Fish and Wildlife Service 2001b). The Recovery Plan was finalized in 2007 (U.S. Fish and Wildlife Service 2007a). The Recovery Plan identified 19 recovery areas for snowy plovers along the Oregon Coast, including some areas owned or leased by OPRD. As described in Chapter 2, “Alternatives,” the conservation measures for snowy plovers described in the draft HCP were developed to implement, in part, recommendations in the Recovery Plan. These conservation measures include management of some OPRD owned or leased park unit lands; implementation of recreational use restrictions on lands managed by OPRD, including areas owned by other landowners; and implementation of beach management activities. These conservation measures would minimize potential effects on snowy plovers and snowy plover habitat.

Covered Lands

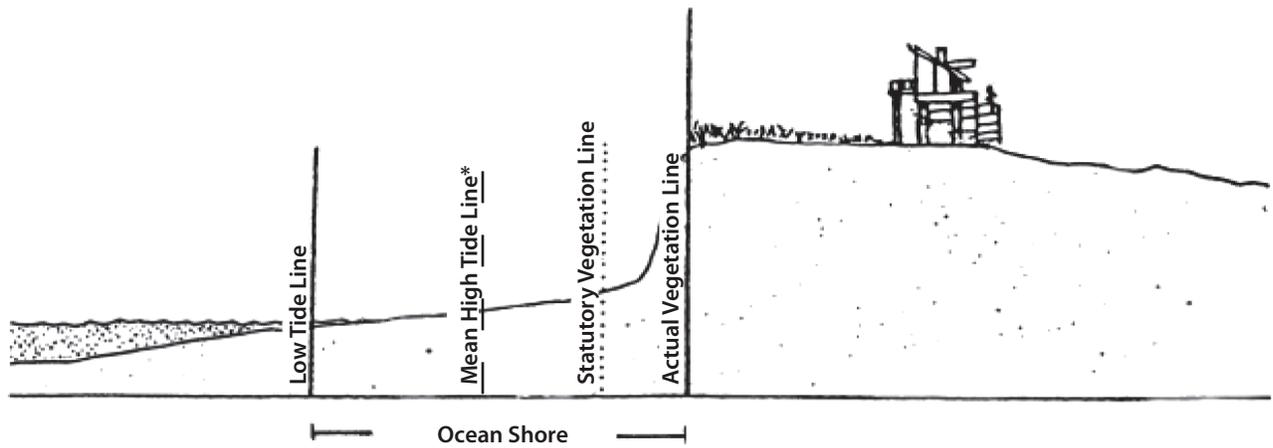
The area covered by the alternatives addressed in this FEIS (the covered lands), includes the sandy portions of the Ocean Shore along the Oregon coast that extend between the mouth of the Columbia River South Jetty on the north and the California/Oregon border on the south. This area encompasses approximately 230 miles of sandy Ocean Shore beach (total mileage of the Oregon coast is 362 miles) (Figure 1-1). The sandy Ocean Shore is defined as the area from extreme low tide to the actual or statutory vegetation line, whichever is most landward (Figure 1-2).¹ OPRD is responsible for managing the Ocean Shore as granted under Oregon Revised Statutes (ORS 390.635 and 390.620 and implemented under Oregon Administrative Rule (OAR) 736-020-0040(3) and in cooperation with Federal land management actions as per the Coastal Zone Management Act (CZMA). The Ocean Shore does not include estuaries or river mouths, which are under the management of the Oregon Department of State Lands (ODSL).

¹ The statutory vegetation line is a historical vegetation line created during a survey of the coastline in 1967 with a series of survey points connected by lines established to approximate the actual vegetation line at the time. Since then, in several places, the actual vegetation line has moved seaward or inland of that statutory vegetation line as a result of natural and man-made processes.

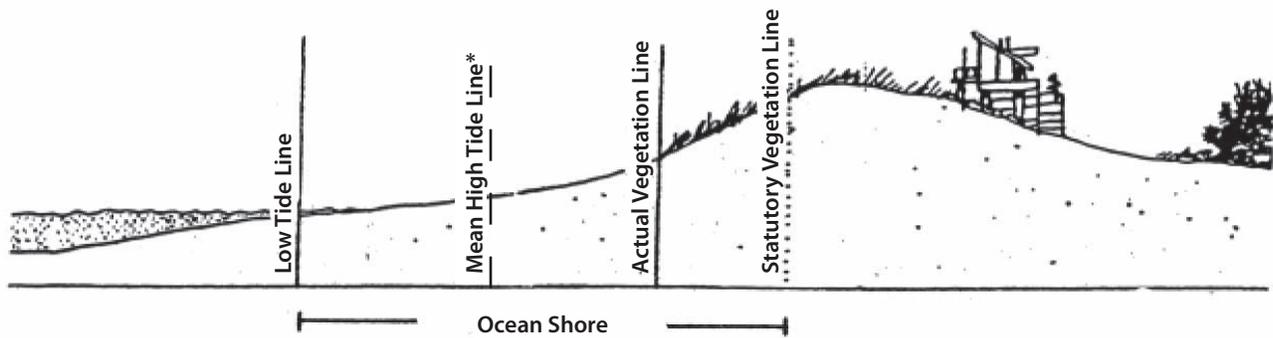


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Figure 1-1
Project Vicinity



Defined boundary of the Ocean Shore when the actual vegetation line is further landward than the statutory vegetation line.



Defined boundary of the Ocean Shore when the statutory vegetation line is further landward than the actual vegetation line.

*OPRD's permit jurisdiction on the Ocean Shore extends landward from the low tide line to the mean high tide line on Federal lands and from the low tide line to the statutory or actual vegetation line, whichever is most landward, on all other lands.

**Figure 1-2
Ocean Shore Jurisdictional Extent**

Covered lands for the HCP do not include the Federal lands within the Ocean Shore boundary. Federal jurisdiction within the Ocean Shore boundary extends between the mean high tide line and the actual or statutory vegetation line (Figure 1-2) adjacent to federally owned lands. Any actions that may occur on Federal lands within the Ocean Shore, regardless of who conducts the activity, would be the responsibility of the Federal landowner and would require separate consultation with USFWS if the actions would result in potential effects on federally listed species, including snowy plovers. In addition, if these Federal actions could result in effects on uses or natural resources within Oregon's defined *coastal zone*, the actions would be required to be consistent with the State's enforceable policies, including the Ocean Shore Management Plan (Oregon Parks and Recreation Department 2004), as required by the CZMA.

Portions of the following key State Parks, State Natural Areas, and State Recreation Areas are also included in the covered lands (as illustrated in Figures 1-3 through 1-11). The parenthetical reference after each listing reflects the name of the associated snowy plover management area that is evaluated in this FEIS.

- Fort Stevens State Park (Columbia River South Jetty) (Figure 1-3),
- Gearhart Ocean State Recreation Area (Necanicum Spit) (Figure 1-4),
- Nehalem Bay State Park (Nehalem Spit) (Figure 1-5),
- Cape Lookout State Park (Netarts Spit) (Figure 1-6),
- Robert Straub State Park (Nestucca Spit) (Figure 1-7),
- Bullards Beach State Park (Bullards Beach) (Figure 1-8),
- Bandon State Natural Area (Bandon) (Figure 1-9),
- Cape Blanco State Park (Sixes River Mouth) (Figure 1-10), and
- Pistol River State Natural Area (Pistol River) (Figure 1-11).

It is important to note that the study area boundary for certain resources evaluated in this FEIS (e.g., air quality) may differ from the geographic boundary of the covered lands, depending on the extent and nature of potential impacts. The study area boundaries for each resource area are described in Volume I of this FEIS in Chapter 3, "Affected Environment, Environmental Consequences, and Cumulative Effects."

Covered Activities Included in the Habitat Conservation Plan

Activities covered under the HCP include all activities for which OPRD has responsibility within the covered lands that could result in take of snowy plovers. These activities are described in detail in Chapter 2, "Alternatives," and include public use/recreation management, natural resources management, and beach management.

1.3 Environmental Review Process

1.3.1 Process Steps

The EIS process began with internal and interagency discussions to address key components of alternative descriptions, to develop the level of detail for impact and cumulative analysis, and to prepare the DEIS framework and schedule. Public input was solicited during a 40-day public scoping period consisting of four public meetings (Section 1.3.2, “Scoping”). Written and verbal comments received during the public scoping period were used to develop the DEIS.

Public input was solicited on the DEIS during a 60-day public comment beginning in November 2007, and extended in February 2008 (Section 1.3.3, “Public Review and Comment Period”). A second public comment period was held from April 17, 2009 through June 1, 2009. Written comments received during the public review and comment periods were used to revise the DEIS analysis and refine the conservation measures in the HCP. Responses to all substantive comments received during the public comment period are provided in Volume II of this FEIS.

This FEIS will be distributed for a 30-day public review period. After the FEIS review period has been completed, USFWS will evaluate the alternatives in the FEIS and make a permit decision on the proposed action. The final decision-making process and analysis will be disclosed in an ESA Section 10 Findings document, an ESA Section 7 Biological Opinion, and a NEPA ROD.

1.3.2 Scoping for Development of the DEIS

In March 2003, four public meetings were held in Coos Bay (March 11th), Newport (March 12th), Tillamook (March 13th) and Portland (March 19th). The meetings were advertised in several local newspapers, including the *Seaside Signal*, *Newport News Times*, *Oregonian*, *The World*, *Siuslaw News*, and the *Curry County Reporter*. All of the meetings were also announced through letters to interested parties. USFWS also published a Notice of Intent to conduct public scoping meetings and prepare an EIS for the proposed HCP in the Federal Register published on March 20, 2003 (68 FR 13720).

Public and agency comments were received orally at the meetings, and in writing in letters received after the meetings. Comments received during public meetings facilitated by OPRD to formulate the HCP were also considered during the public scoping period. The DEIS was prepared with consideration of issues raised during the public scoping processes.

A complete discussion of the scoping process is presented in the Scoping Report for this project (U.S. Fish and Wildlife Service 2005a).



Figure 1-3
Boundary of Covered Lands within Fort Stevens State Park
(Columbia River South Jetty)

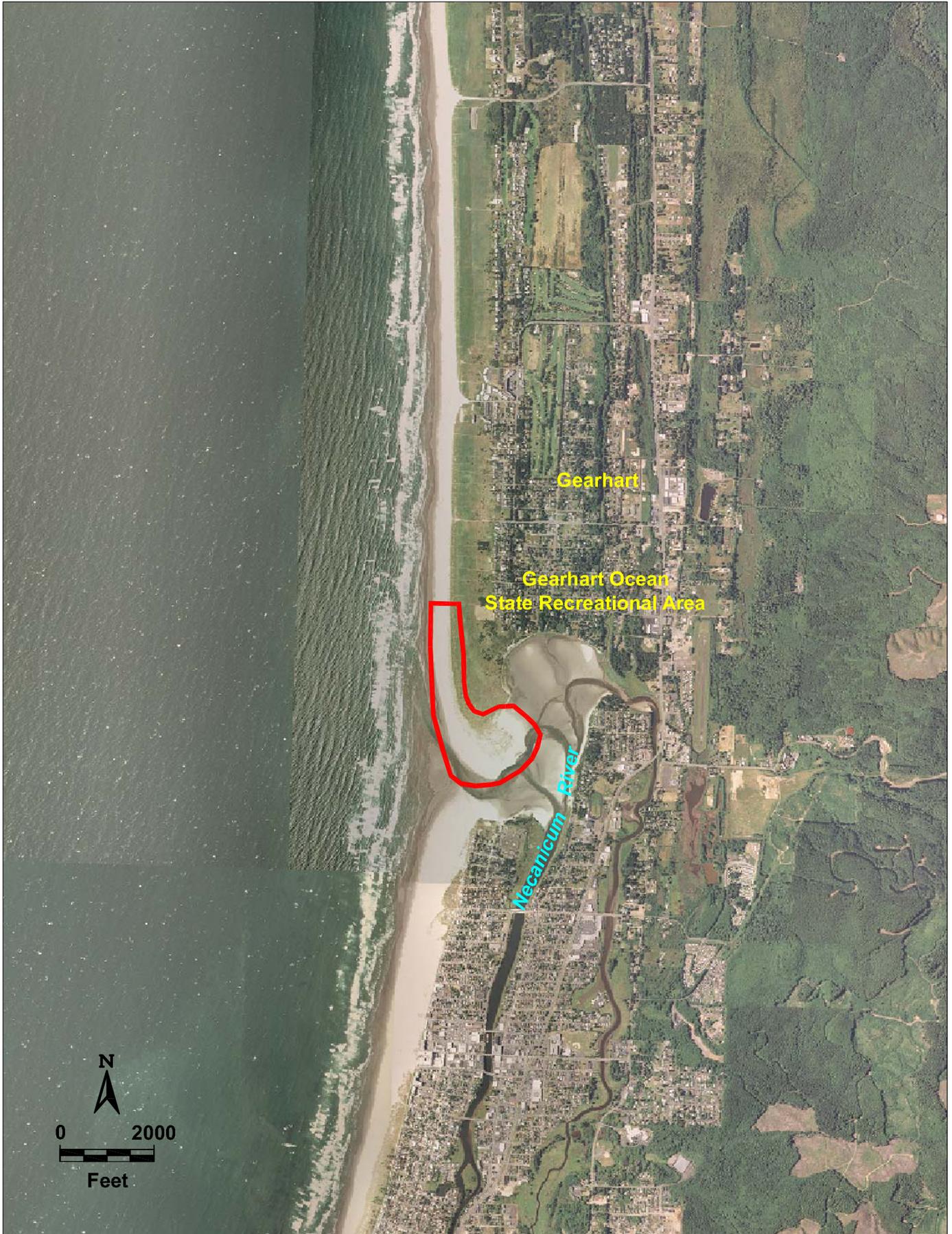


Figure 1-4
Boundary of Covered Lands within Gearhart Ocean State Recreation Area
(Necanicum Spit)



Figure 1-5
Boundary of Covered Lands within Nehalem Bay State Park
(Nehalem Spit)

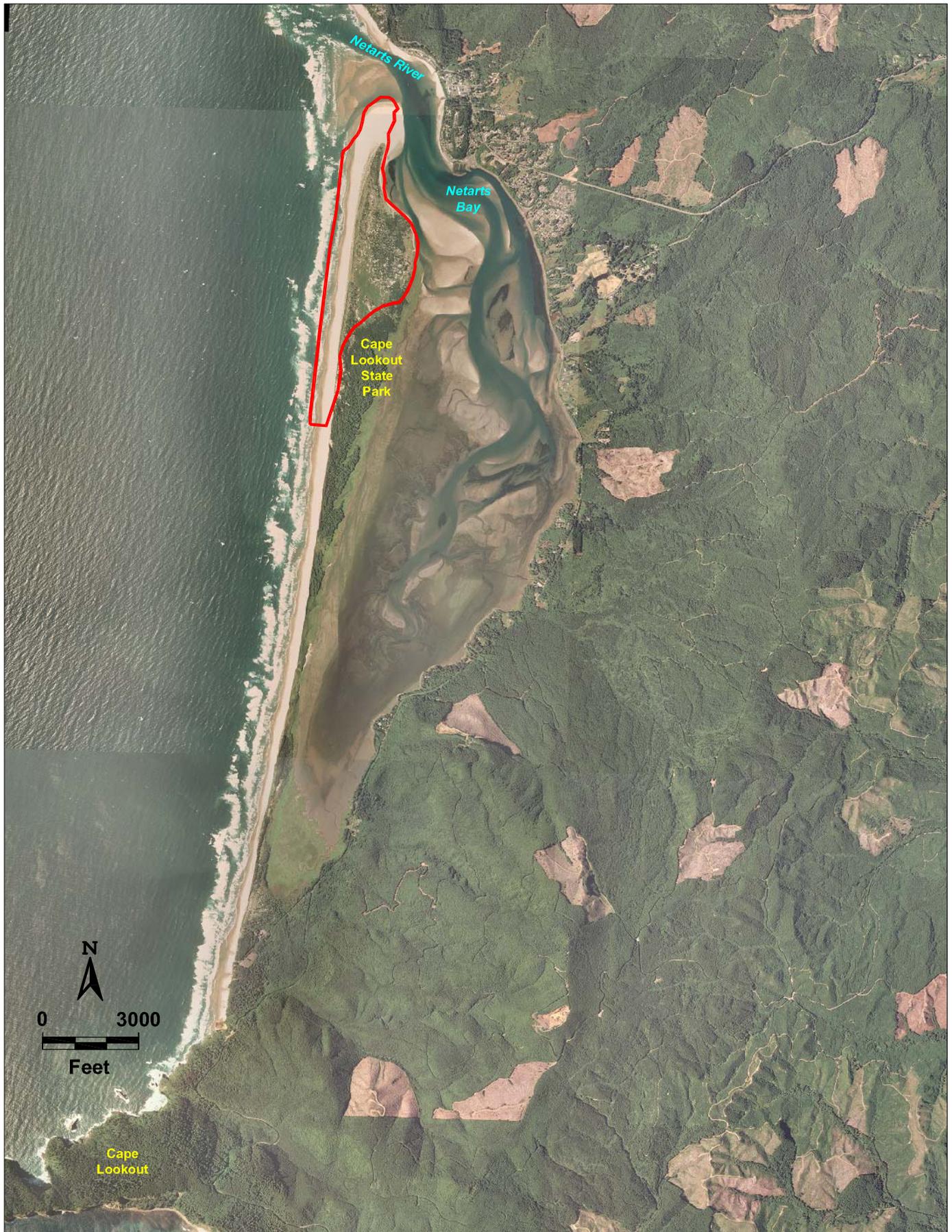


Figure 1-6
Boundary of Covered Lands within Cape Lookout State Park
(Netarts Spit)



Figure 1-7
Boundary of Covered Lands within Robert Straub State Park
(Nestucca Spit)



Figure 1-8
Boundary of Covered Lands within Bullards Beach State Park
(Bullards Beach)



Figure 1-9
Boundary of Covered Lands within Bandon State Natural Area
(Bandon)



Figure 1-10
Boundary of Covered Lands within Cape Blanco State Park
(Sixes River Mouth)



Figure 1-11
Boundary of Covered Lands within Pistol River State Natural Area
(Pistol River)

1.3.3 Public Review and Comment Period on the DEIS and Draft HCP

Public input on the DEIS and draft HCP were solicited during a 60-day public comment period from November 5, 2007 to January 4, 2008, with an extension from February 26, 2008 to March 12, 2008. The public review and comment period was announced in the Federal Register published on November 5, 2007 (72 FR 62485), and in several local newspapers. The availability of the draft documents for review was also announced through letters to interested parties. An additional public review period was announced on April 17, 2009, and extending for 45 days through June 1, 2009. This review was announced in the *Federal Register* published on April 17, 2009 (74 FR 73).

Electronic copies of the DEIS, HCP, and implementing agreement (IA) were posted to the USFWS web site (www.fws.gov/oregonfwo/Species) and to the OPRD web site (egov.oregon.gov/OPRD/PLANS/osmp_hcp.shtml). Hard copies of all documents were also made available at the USFWS Newport Field Office and at public libraries in Astoria, Bandon, Brookings, Coos Bay, Florence, Gold Beach, Manzanita, Newport, Port Orford, Reedsport, Seaside, Tillamook, and Warrenton.

A total of 103 comment letters were received during the public review and comment periods. Four comments letters were submitted by Federal agencies, one comment letter was submitted by a State agency, 11 comment letters were submitted by local agencies, ten comment letters were submitted by non-governmental organizations, and 77 comment letters were submitted by the general public. NEPA requires that a Federal lead agency consider all comments received during the review and comment period, and provide a response to all comments that are considered substantive. Responses to all substantive comments received during the public comment and review period are provided in Volume II of this FEIS.

1.4 Relationships to other Plans, Regulations, and Laws

Many Federal and State statutes, regulations, and policies govern the activities proposed for ITP coverage under the *Western Snowy Plover Habitat Conservation Plan* (Oregon Parks and Recreation Department 2008). The major Federal and State permits and regulatory consultation requirements that may be required as a result of any of the proposed alternatives are listed in Table 1-2, and summarized in the text that follows the table.

Table 1-2. Major Permits, Approvals, Environmental Review, and Consultation Requirements Possibly Applying to the Proposed Project Alternatives

Permit/Consultation	Oversight Agency	Project Activities that Trigger Permit/Consultation Requirement
FEDERAL REQUIREMENTS		
NEPA	USFWS	Major Federal actions significantly affecting the quality of the human environment. Issuing Federal permits, such as an ITP, triggers the NEPA process as a major Federal action.
Section 10, ESA, ITP (16 USC 1539)	USFWS and NMFS	Potential incidental take of federally listed threatened and endangered species. Application reviewed by USFWS and/or NMFS if requested by a non-Federal applicant when proposed activities have the potential to harm listed species
Section 7, ESA Consultation (16 USC 1536)	USFWS and NMFS	Consultation triggered by proposed issuance of a Section 10 ITP by FWS and/or NMFS
Migratory Bird Treaty Act Permit	USFWS	Activities that result in the take of migratory birds.
Coastal Zone Management Act Permit (16 USC 1451)	National Oceanic Atmospheric Administration, Office of Ocean and Coastal Resource Management, through DLCDC	Applies to development activities within the coastal zone. Federal agencies must demonstrate that their actions are consistent with a State's approved coastal zone management program and seek a Federal consistency review.
Section 404, CWA Permit (33 USC 1344)	Corps	Discharge of dredged or fill material into waters of the United States, including wetlands. Permits are issued following public interest review and analyses according to the EPA Section 404(b)(1) guidelines
Section 10, Rivers & Harbors Act of 1899 Permit (33 USC 403)	Corps	Applies to activities that could affect navigable waters of the United States
Section 401, CWA Permit (33 USC 1341)	EPA, delegated to ODEQ	Discharges requiring a Federal license or permit must comply with State water quality standards.
Section 106, National Historic Preservation Act Consultation (16 USC 470)	USFWS, through the State Historic Preservation Office and Advisory Council on Historic Preservation	Activities affecting cultural resources that are determined eligible for listing on the National Register of Historic Places. Also requires consultation and coordination with Native American tribes.
STATE REQUIREMENTS		
Oregon Endangered Species Act Consultation (ORS 496.002-496.192)	ODFW, ODSL, Oregon Department of Agriculture	Consultation triggered by activities taken by State agencies on Oregon State lands that would affect State-listed threatened or endangered species. Consultation typically completed in conjunction with Federal consultation under Section 7 of the ESA.
Statewide Land Use Planning Goals	DLCD	Nineteen statewide land use planning goals that are achieved primarily through local comprehensive planning and implementation measures.
Oregon Removal-Fill Permit (ORS 196.795-900)	DSL	Activities that could result in the removal or fill of material into waters of the State.

Permit/Consultation	Oversight Agency	Project Activities that Trigger Permit/Consultation Requirement
State Ocean Shore Rules	OPRD	Wide variety of OPRD authorities and mandates regarding the Ocean Shore.
FPA	ODF	Governs forest management in the State of Oregon.

Corps = U.S. Army Corps of Engineers
 CWA = Clean Water Act
 DLCD = Oregon Department of Land Conservation and Development
 ODSL = Oregon Department of State Lands
 ODEQ = Oregon Department of Environmental Quality
 EPA = Environmental Protection Agency
 ESA = Endangered Species Act
 ITP = Incidental take permit
 NEPA = National Environmental Policy Act
 NMFS = National Marine Fisheries Service
 ODFW = Oregon Department of Fish and Wildlife
 OPRD = Oregon Parks and Recreation Department
 ORS = Oregon Revised Statutes
 USFWS = U.S. Fish and Wildlife Service
 USC = United States Code

1.4.1 Federal Permits and Consultation Requirements

Development of the HCP and related EIS are regulated primarily by the ESA and NEPA, as described in Section 1.2.2, “Need for the Action.” Other Federal permits and consultations that may be required over the term of the proposed permit term are summarized below.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits the take of any migratory bird, or any part, nest, or egg of any such bird. Under the MBTA, take is defined as the attempt to “pursue, hunt, shoot, capture, collect, or kill” a protected species. This act applies to all persons and organizations in the United States, including Federal and State agencies. The MBTA is administered by USFWS, with regulation of listed migratory birds delegated to the USFWS Endangered Species Division, and regulation of unlisted migratory birds delegated to USFWS Migratory Bird Division.

There are numerous migratory birds located within the covered lands, including snowy plovers. Take of migratory birds as a result of an alternative evaluated in this EIS would require consultation with USFWS.

Coastal Zone Management Act

The CZMA encourages states to voluntarily preserve and protect resources along the nation’s coast. With an approved coastal zone management plan, a State is authorized to ensure that development within its designated coastal zone is consistent with that plan. In addition, under the “Federal consistency” provisions of the CZMA, a State is also afforded the opportunity to review Federal actions, inside or outside of the coastal zone, which may affect coastal resources to ensure that those actions are consistent with the approved plan.

The Oregon Coastal Management Program is implemented by the Oregon Department of Land and Conservation Development (DLCD), in collaboration with local coastal jurisdictions (see *Statewide Land Use Planning Goals* below), and other State agencies, including OPRD (under the Ocean Shore Law or “Beach Bill”) and DSL (see *Oregon Removal-Fill Law* below). Completion of an EIS and issuance of an ITP by USFWS would constitute a Federal action subject to Federal consistency review under the CZMA.

Section 404, Clean Water Act

The U.S. Army Corps of Engineers (Corps) requires project applicants to obtain a Clean Water Act (CWA) Section 404 permit if a proposed action would result in the discharge of dredged or fill material into waters of the United States, including

wetlands. Authorization would have to be obtained from the Corps if implementation of any of the covered activities would require placement of fill in waters of the United States.

Section 10, Rivers and Harbors Act, 1899

The Corps requires project applicants to obtain a Rivers and Harbors Act Section 10 permit if a proposed action would require work in, under, or over navigable waters of the United States, or if work outside of navigable waters would affect the course, location, or condition of navigable waters of the United States. Authorization would have to be obtained from the Corps if implementation of any of the covered activities would affect navigable waters of the United States, including the Pacific Ocean.

Section 401, Clean Water Act

Section 401 of the CWA requires Federal agencies to ensure that their proposed actions, including issuance of a permit, do not violate State water quality standards. In Oregon, the Oregon Department of Environmental Quality (ODEQ) is responsible for determining if an action meets State water quality standards and is eligible for water quality certification.

Consideration of a Section 404 permit is an action that requires evaluation for water quality certification. If a Section 404 permit is required to implement any of the covered activities, water quality certification under Section 401 would also be required.

Section 106, National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that historical and archeological resources eligible for listing on the National Register of Historic Place (NRHP) be considered during planning and implementation of Federal projects. Specifically, the Section 106 process requires that the Federal lead agency for an EIS consult with the Oregon State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and Native American Tribes to determine if a proposed project could effect properties listed or eligible for listing on the NRHP, as well as ways to minimize and mitigate adverse impacts on such properties.

Implementation of the alternatives described in this EIS may require consultation with SHPO prior to implementation, as described in Section 3.11, “Cultural Resources.”

1.4.2 State Permits and Consultation Requirements

State permit and consultation requirements that may be required during the term of the ITP are summarized below.

Oregon Endangered Species Act

Similar to the Federal ESA, the Oregon ESA (ORS 496.002 through 496.192) offers protection to species listed as threatened or endangered under the Oregon ESA. However, the Oregon ESA is much more limited in scope and applies only to State agencies taking actions on State owned or leased lands. The Oregon ESA is administered by ODFW, DSL, and the Oregon Department of Agriculture.

Snowy plovers are listed as threatened statewide. Since all of the covered activities would take place on lands either owned or leased by the State, OPRD would be required to consult with ODFW for impacts on snowy plovers. In practice, compliance with the Oregon ESA is typically achieved during consultation with the Federal agencies pursuant to the Federal ESA.

Statewide Land Use Planning Goals

Nineteen statewide planning goals govern land use planning in Oregon. The statewide goals, which include direction on how to conserve, protect and, where appropriate, develop coastal resources, are achieved through local comprehensive planning and implementation measures. State law requires each city and county to have a comprehensive plan and the zoning and land division ordinances to put that plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

Goal 17: Coastal Shorelands, and Goal 18: Beaches and Dunes, have particular relevance to the proposed project alternatives evaluated in this Draft EIS.

Oregon Removal-Fill Law

Similar to Section 404 of the CWA, Oregon's Removal Fill law (ORS 196.795-900) regulates activities that would result in the removal or fill of material into waters of the State. Waters of the State include national waterways, intermittent streams, constantly flowing streams, lakes, and wetlands. The DSL administers the Removal-Fill Program. Authorization would have to be obtained from DSL if implementation of a covered activity would result in the removal or fill of material into waters of the State.

1.5 Organization of Volume I of this Final Environmental Impact Statement

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- Chapter 7, “Acronyms and Abbreviations”
- Appendices

