

OREGON MARINE RESERVES PROCESS: INFORMATIONAL UPDATE TO THE FISH AND WILDLIFE COMMISSION

I. BRIEF SUMMARY OF OREGON'S MARINE RESERVES PROCESS TO DATE

The State of Oregon is engaged in an ongoing process to designate a system of marine reserves in Oregon's Territorial Sea. At the beginning of the process, the state's Ocean Policy Advisory Council (OPAC), a legislatively mandated advisory body that provides marine policy advice to the Governor of Oregon, defined a marine reserve as:¹

[A]n area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors.

The Oregon Department of Fish and Wildlife (ODFW) became heavily involved in the process in March of 2008, when Governor Kulongoski issued an Executive Order that placed ODFW as the lead agency working with OPAC to identify possible marine reserve sites. The executive order also identified key sideboards, which shaped the recommendation process. Those sideboards include: limiting recommendations to nine or fewer sites; ensuring sites are ecologically meaningful without causing significant socioeconomic hardship; and placing a priority on sites developed collaboratively with coastal communities, ocean users, and the public.

Based on those sideboards, OPAC and ODFW worked from 2007 through 2008 to identify and recommend possible marine reserve sites in Oregon. At the end of 2008, OPAC forwarded those recommendations to the Governor, who endorsed the recommendations and requested funding for implementation in the Governor's Recommended Budget for 2009-2011. In June of 2009, the Oregon legislature passed House Bill (HB) 3013, which directs state agencies to implement the OPAC recommendations, provides for funding, and directs ODFW, in consultation with others, to develop a work plan to implement the OPAC recommendations. HB 3013 also directs ODFW and other relevant agencies to adopt rules to "establish, study, monitor, evaluate and enforce" two pilot marine reserve sites, Otter Rock near Depoe Bay, and Redfish Rocks near Port Orford.

ODFW is making progress implementing HB3013's directives. During the summer of 2009, staff developed a marine reserves work plan in consultation with scientists, relevant state agencies, ocean users, coastal communities, and the general public. As part of work plan implementation, the agency is currently engaged in the rulemaking process and staff will appear before the Oregon Fish and Wildlife Commission at the December meeting to request adoption of marine reserves rules for the two pilot sites.

In order to update Commission members and provide context for the December rulemaking hearing, this document briefly summarizes Oregon's marine reserves process to date, the marine reserves proposal process and OPAC recommendations, marine reserve related legislation from

¹ Ocean Policy Advisory Council, *Oregon Marine Reserve Policy Recommendations: A Report to the Governor, State Agencies and Local Government from OPAC*, November, 2008.

the Oregon Legislature’s 2009 session, agency actions concerning marine reserves, and an explanation of what the marine reserves rulemaking effort will entail.

II. PROPOSAL PROCESS AND OPAC RECOMMENDATIONS

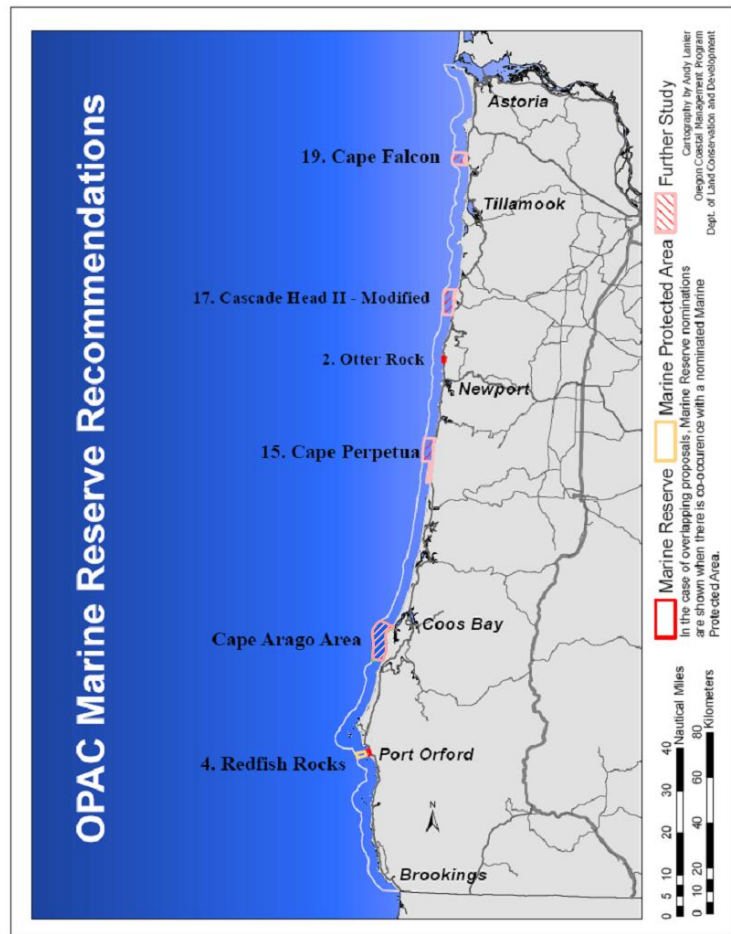
Proposal Process

Between June and September of 2008, community groups and citizens developed proposals for marine reserve sites. The proposals describe specific attributes of the site, such as size and location, habitat and species types present in the site, and the ease of enforcement, as well as factors such as potential research opportunities, community support, and how the site avoids significant adverse economic and social impacts. Groups and individuals submitted twenty proposals to OPAC, which covered nine distinct areas from Tillamook Head down to Mack Reef.

OPAC Recommendation

State agencies and OPAC reviewed the twenty proposals and at the end of November, 2008, OPAC ultimately recommended that six areas move forward for further consideration or development. OPAC recommended two of the areas, Otter Rock and Redfish Rocks, for designation as pilot marine reserves. The areas were recommended to move ahead as pilot reserves because the proposals were the most developed in terms of community collaboration and baseline information. These areas will be designated as pilot marine reserves by the end of 2009, following appropriate rulemaking and consideration of baseline data needs.

The four other areas require additional time for ecological and socioeconomic information to be gathered, as well as for further collaboration among ocean users, coastal communities, and other interested parties. Three of these areas, Cape Falcon, Cascade Head, and Cape Perpetua, have proposals associated with them that will serve as starting points for further evaluation and collaboration. The final area, Cape Arago/Seven Devils, will not use an existing proposal as a starting point but will instead start fresh with the International Port of Coos Bay supporting and leading a collaborative process to consider and develop a new marine reserve proposal for the area.



Department of Land Conservation and Development

III. LEGISLATIVE ACTION (2009 SESSION)

Budget

Governor Kulongoski and the Oregon state legislature support implementing the OPAC marine reserve recommendations. The 2009-2011 Governor's Recommended Budget included funds for ODFW to implement OPAC recommendations, and the Legislature granted the ODFW budget request that encompassed those funds.

In total, the legislature allocated \$2,000,000 to ODFW for marine reserves work during the 2009-2011 biennium. \$1,000,000 will come from state funds, specifically, unobligated settlement funds left over from the *New Carissa* removal. The Department of State Lands (DSL) transferred those funds to ODFW during the summer of 2009. The other \$1,000,000 allocation acts as a placeholder for donations or grants that the agency may accept from outside sources. This funding is not guaranteed and availability depends upon obtaining outside donations and grants. Any outside donations and grants going towards marine reserves must be consistent with the ODFW-developed marine reserves work plan, which is discussed below.

The full ODFW budget includes eight new staff positions to implement the next phase of the marine reserves process. Hiring for some of those staff began during the summer of 2009. Hiring for others will be delayed depending on the availability of outside grants and donations. The new positions are discussed in more detail in section IV, below.

House Bill 3013 Requirements

Also during the 2009 legislative session, the legislature passed HB 3013. HB 3013 directs state agencies to implement the OPAC recommendations, provides for funding, and directs ODFW, in consultation with others, to develop a work plan and adopt rules to implement the OPAC recommendations. A copy of HB 3013 (2009) is attached to this exhibit.

The specific call of the legislation is to implement the OPAC recommendations by:

- (1) Adopting rules to establish, study, monitor, evaluate and enforce a pilot marine reserve at Otter Rock and a pilot marine reserve and a marine protected area at Redfish Rocks;
- (2) Studying and evaluating potential marine reserves at Cape Falcon, Cascade Head and Cape Perpetua; and
- (3) Supporting the development of a marine reserve proposal at Cape Arago-Seven Devils.

HB 3013 directs ODFW to develop a work plan that will implement the above actions and meet certain requirements. The work plan must:

- (1) Be developed in consultation with scientists from OPAC's Scientific and Technical Advisory Committee and other scientists, relevant state agencies, ocean users, and coastal communities;
- (2) Provide for communities and volunteers to assist in implementing the work plan where feasible and practical;
- (3) Contain certain elements, including:
 - a. A biological assessment, including information on habitat characterization, biological resources, local knowledge and, for the established pilot marine reserves, monitoring plans;

- b. A socioeconomic assessment, including a description of human uses, net effects on sport and commercial fisheries and communities and, for the established pilot marine reserves, monitoring plans;
- c. Formation of community teams with diverse and balanced stakeholder representation. The legislation prescribes specific team membership requirements;
- d. A process to develop scientifically based goals specific to each of the marine reserve sites, incorporating continuity and cumulative outcomes, benefits and impacts; and
- e. A process to develop an enforcement plan in consultation with the Oregon State Police and representatives from affected user groups.

IV. AGENCY ACTION

Work Plan Development

Taking into account the above requirements, ODFW drafted and refined the marine reserves work plan during the summer of 2009. To meet HB 3013's consultation requirement, ODFW held two workshops to solicit input on the plan.

The first workshop invited members of the scientific community to help shape work plan components relating to the biological, habitat, and socioeconomic work that will be conducted over the next two years. The thirty specialists in attendance focused on three main objectives:

- (1) **Setting research/monitoring objectives for *pilot sites***, specific to biological and socioeconomic monitoring and baseline surveys. The exercise was focused on the objective of using reserves as reference areas. Workshop participants were asked to identify and prioritize research questions/monitoring objectives that will help define a Monitoring Program (including baseline studies) and from which researchers can design specific studies. Workshop participants also discussed ideas for appropriate indicators and metrics to be monitored to meet high priority monitoring objectives.
- (2) **Setting research/monitoring objectives for *evaluation sites***, specific to biological and socioeconomic assessments needed to help community teams refine or develop site recommendations. Participants were reminded that as the process moves forward, community teams will define specific goals for each pilot and evaluation area.
- (3) **Identifying opportunities for the scientific community to be engaged** in the marine reserves process.

The second workshop was for the general public. At that workshop, ODFW staff provided an overview of the work plan, identified opportunities for the public to engage in the process, and invited input from coastal community members, the fishing industry, ocean users, elected officials, and the general public. During the open public comment period at the workshop and through written comments submitted afterwards, ODFW received many helpful questions and comments. Most of the questions and comments fell into four main categories: the biological assessment; community teams; communication strategy; and the rulemaking process and timeline.

Based on input from the workshops, other public comments, and feedback from agency staff, ODFW finalized the work plan in September. The plan encompasses both the two pilot and the four evaluation sites, and covers biological, habitat, socioeconomic, and community outreach work. A copy of the work plan is attached to this exhibit.

Marine Reserves Staff

In order to implement the marine reserves work, ODFW's Marine Resources Program (MRP) will be hiring up to eight new positions over the next two years. All are limited duration positions through June 30, 2011. MRP initiated hiring for five of those staff during the summer of 2009, while hiring for the three others is dependent on the availability of outside grants and donations. The five positions hired thus far include:

- (1) *Marine Reserves Program Manager*. The Program Manager will plan, lead and direct the marine reserves process, develop and monitor the program budget, and act as the department's primary expert and point of contact.
- (2) *Marine Reserves Research Project Leader*. The Research Project Leader will focus on developing and carrying out the biological and habitat assessment and monitoring programs for the marine reserves process.
- (3) *Marine Reserves Research Project Assistant*. The Research Project Assistant will assist the project leader in carrying out and coordinating biological and habitat assessments.
- (4) *Community Support Leader*. The Community Support Leader will facilitate the public process and provide support to community teams for marine reserve proposals, plans, and implementation.
- (5) *Socioeconomic Analyst*. The Socioeconomic Analyst will lead and coordinate socioeconomic assessments for proposed marine reserve sites and associated communities.

V. RULEMAKING

ODFW is currently developing rules to comply with HB 3013's mandate to "adopt rules to establish, study, monitor, evaluate and enforce" the pilot marine reserve at Otter Rock and the marine reserve and marine protected area at Redfish Rocks. ODFW's draft rules focus on fish and invertebrate harvest prohibitions in the reserve areas, but allow for certain uses such as transiting, drifting, or anchoring in an area, non-extractive recreation, removal of crab gear that has drifted into the reserve, and scientific take necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors.

Because multiple agencies have jurisdiction over the reserve areas and activities, ODFW is working jointly with DSL, the Oregon Parks and Recreation Department (OPRD), and their respective Commissions/Boards to adopt marine reserve rules. In addition to ODFW's rules, DSL will request that the State Land Board adopt rules to establish the reserve and protected area boundaries and regulate uses of state-owned submerged and submersible lands within the reserve areas (including harvest of kelp). OPRD will request that the Parks and Recreation Commission adopt rules governing "living or non-living natural products of the ocean shore," including intertidal algae harvest and non-living intertidal take.

Another aspect of the joint rulemaking process is hosting joint public meetings where ODFW, DSL, and OPRD will present their respective rules and take public comment. Three joint meetings are scheduled for late October in Salem, Port Orford, and Otter Rock. The purpose of the joint meetings is to provide forums where the public can receive information on, discuss, and provide recommendations for the marine reserves regulations in one sitting, rather than being required to attend separate agency meetings. By providing joint forums in three different locations, it is the agencies' hope to obtain maximum public participation.

ODFW staff will appear before the Commission at the December 11 meeting to request adoption of the ODFW marine reserves rules. At that time staff will present the Commission with draft Oregon Administrative Rules that incorporate input received at the October public meetings and other public and agency input.