

## Agenda Item Summary

### BACKGROUND

Oregon House Bill 3013 (2009) (HB 3013) provides that the Oregon Department of Fish and Wildlife (Department), the Oregon Fish and Wildlife Commission (Commission) and other relevant state agencies “...shall, consistent with existing statutory authority, implement the November 29, 2008, recommendations from the Ocean Policy Advisory Council on marine reserves 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...”

HB 3013 and the Ocean Policy Advisory Council (OPAC) recommendations referenced therein are the results of a multi-year process to consider establishing marine reserves in Oregon’s territorial sea. As presented to the Commission at the October 2, 2009 meeting, OPAC worked from 2007 through 2008 to identify possible marine reserve sites in Oregon’s territorial sea. At the end of 2008 OPAC recommended two sites, Otter Rock and Redfish Rocks, for designation as “pilot” marine reserves.

The Otter Rock marine reserve is located between Newport and Depoe Bay in Lincoln County, and encompasses approximately 1.3 square miles of nearshore waters. The Redfish Rocks marine reserve is located south of Port Orford, and encompasses approximately 2.6 square miles of nearshore waters. The Redfish Rocks site includes an associated marine protected area, which extends westward to the territorial sea boundary and covers approximately 5.1 additional square miles. A map of the areas, showing specific coordinates, is attached to this exhibit as Attachment 4.

OPAC recommended the Otter Rock and Redfish Rocks sites to move forward as pilot reserves because the site proposals were the most developed in terms of community collaboration and baseline information, as compared with the four other areas OPAC recommended for further evaluation or consideration (Cape Falcon, Cascade Head, Cape Perpetua and Cape Arago). The proposed administrative rules do not regulate any activities in these four other areas; they regulate only the Otter Rock marine reserve and the Redfish Rocks marine reserve and marine protected area. The Commission could amend the rules later to accommodate additional sites if warranted.

HB 3013 instructed other relevant state agencies to adopt marine reserve rules for Otter Rock and Redfish Rocks as well. The Department worked closely with the Department of State Lands (DSL), and the Oregon Parks and Recreation Department (OPRD) to develop proposed rules.

The DSL will request that the State Land Board adopt rules December 8, 2009, establishing the marine reserve and marine protected area boundaries and regulations for submerged and submersible lands within the reserve areas (including harvest of kelp).

OPRD will request that the Parks and Recreation Commission adopt rules January 28, 2010, governing “living or non-living natural products of the ocean shore,” including intertidal algae harvest and take of non-living resources in the intertidal area. OPRD’s rules will apply only to the rocky intertidal (northern) portion of the Otter Rock marine reserve.

The proposed Fish and Wildlife Commission rules regulate commercial and recreational fishing and hunting, thus a new division of administrative rules is necessary.

## **PUBLIC INVOLVEMENT**

There have been numerous opportunities and venues for public involvement throughout the OPAC process, legislative process, and rulemaking process. Community-based groups submitted the proposals for the Otter Rock and Redfish Rocks sites, and members of those groups as well as members of the general public attended and testified at OPAC meetings during the site recommendation process during 2008. When the recommendation process moved on to the legislature, members of the public testified at hearings and submitted written comments to the legislature regarding HB 3013.

In October, the Department released draft marine reserve and marine protected area rules (Attachment 5). The Department held three public meetings to discuss and receive public comments on the draft administrative rules (October 20-22 in Salem, Port Orford and Otter Rock, respectively). The Department conducted the meetings jointly with DSL and OPRD, allowing the public to learn about and comment on all three agencies’ draft rules at one time. Additionally, in early October the Department used the Oregon marine reserves website (<http://www.oregonmarinereserves.net>), the Department website, press releases, and a marine reserves email distribution list (listserv) to announce the availability of the Department’s draft rules and invite public comment. Attachment 7 of this exhibit includes a summary of comments received at the meetings and other draft rule comments sent to the Department. Many of the public comments have been general statements of support or opposition to marine reserves, and some have focused on the creation of marine reserve community teams. Community team formation does not fall under the auspices of the marine reserves administrative rules, but is undergoing a separate and extensive public process.

## **ISSUE 1**

### **ADOPT RULES REGULATING FISH AND WILDLIFE HARVEST IN THE OTTER ROCK MARINE RESERVE AND REDFISH ROCKS MARINE RESERVE AND MARINE PROTECTED AREA**

## **ANALYSIS**

The Department’s proposed administrative rules reflect the OPAC recommendations and incorporate provisions from the Otter Rock and Redfish Rocks community team proposals as mandated by HB 3013.

In addition to the OPAC recommendations and HB 3013 direction, the Department strived to keep the proposed rules simple, straightforward, and squarely within the Commission’s jurisdiction. Based on this

approach and as discussed in detail below, some issues and concerns raised by commenters are more appropriately addressed via education and outreach than by rule.

#### PURPOSE (OAR 635-012-0020)

The purpose section includes a provision that the prohibitions specified in the Division will go into effect on June 30, 2011, to allow time for the Department to collect baseline data in the reserve and protected areas. While this provision is somewhat unusual, staff feels it is important to clarify that although the marine reserve and marine protected area regulations are in place, up until June 30, 2011 people may continue to engage in activities that will be prohibited after that date.

#### BOUNDARIES (OAR 635-012-0040)

The State Land Board sets marine reserve and marine protected area boundaries. The proposed rules incorporate the boundaries by referencing State Land Board rules. One commenter expressed frustration that the Department's boundary descriptions merely refer to a different chapter of the administrative code rather than repeating the boundary description. The Department will place maps and descriptions of the boundaries in both the sport fishing regulation and the synopsis of commercial fishing regulation booklets published each year, as well as appropriate websites. These are the primary sources used by recreational and commercial fishers for information on regulations. In addition, the Department will work with other relevant agencies to provide education and outreach materials, such as maps and signs, to ensure the public is well informed of the boundaries.

#### PROHIBITIONS AND ALLOWANCES (OAR 635-012-0050 and 0060)

These proposed rules describe the prohibitions and allowances within the areas. The rules reflect OPAC recommendations, which incorporate both OPAC's policy guidance and the Redfish Rocks and Otter Rock community team proposals. OPAC's guidance, expressed in its *Oregon Marine Reserves Policy Recommendations* report of November 2008, recommends that marine reserves be areas "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."

#### Otter Rock and Redfish Rocks Marine Reserves

Paragraph (1) of OAR 635-012-0050 prohibits fishing for, hunting for, or take of any fish or wildlife species within the marine reserves. Prohibiting both fishing and hunting in the same regulation is unusual for Department administrative rules, but necessary in order to meet OPAC's recommendation to protect the reserves from extractive activities.

Paragraph (2) covers activities that the Department will allow in the marine reserves. Provision (2)(a), which allows for removal of fishing gear, is an extension of discussions during the OPAC process to allow

crabbers to remove pots that drift into the reserves. Because the Department's intention is to remove any gear that may be harmful to the reserve, it broadened the provision to encompass all types of fishing gear. The Oregon Dungeness Crab Commission provided valuable feedback to help make the regulations as simple as possible to aid compliance. Thus, for commercial crab pots, the marine reserve retrieval provision simply requires retrieving vessels to follow existing requirements found in OAR 635-005-0055(9)(b).

Provision (2)(b) allows scientific researchers to take fish and wildlife species if the Department issues them a scientific taking permit, which is in line with OPAC recommendations to allow for monitoring and research in the reserves. Department staff will develop a coordinated approach for processing internal (Department research) and external (all other research) applications for research work in marine reserves.

Provision (2)(c) allows vessels to have catch onboard while transiting through or anchoring in the area, provided their fishing gear is not deployed in the water. As with provision (2)(a), this proposed rule resulted from discussions among OPAC, the Department, the community teams that proposed the reserves, and fishermen during the proposal process. It is necessary to avoid creating potentially unsafe situations where vessels would be forced to navigate around the areas or not anchor for safe harbor.

Paragraph (3) clarifies that prohibitions within this rule do not supersede the Siletz Tribe's hunting, fishing, trapping and gathering agreement with the State of Oregon and the United States as recorded in OAR 635-041-0500. This agreement has been in place for nearly three decades and these proposed rules do not alter or infringe on that agreement. The new paragraph (3) was inserted to address concerns raised in a letter from the Siletz Tribe included in Attachment 7.

The Department's draft rules included a different paragraph (3), describing non-extractive activities that would continue to be allowed in the marine reserves (e.g. surfing, diving, tidepooling, etc.). This section was intended to clarify that the Department's regulations would not affect activities outside of its jurisdiction or the intended prohibitions of the two pilot site marine reserve proposals. The Department received comments both in favor of and in opposition to the paragraph.

Because it was simply a clarifying provision and was not intended to imply that certain activities beyond the Commission's authority were affirmatively allowed in the area, staff recommends removing the original paragraph (3) from the draft administrative rules and instead using educational and outreach materials to clarify non-extractive activities in marine reserves.

Redfish Rocks Marine Protected Area

A marine protected area is, in general, intended to be less restrictive than a marine reserve by allowing for certain uses that a reserve would prohibit.

The prohibitions and allowances in OAR 635-012-0060 concerning the Redfish Rocks marine protected area are largely the same as those described in the marine reserve section above. The Redfish Rocks marine protected area similarly prohibits fishing for or take of any fish species, and allows for scientific research as well as transiting and anchoring with catch onboard. What distinguishes the protected area is that certain fisheries and hunting are allowed – the proposed administrative rules allow people to participate in authorized salmon and crab fisheries and wildlife hunts.

The community group that proposed the Redfish Rocks marine reserve and marine protected area proposed these fishery allowances in the protected area. They did so in order to provide protection for bottom dwelling species with a somewhat larger home range than can be protected by a smaller marine reserve, while allowing fisheries for species that would have little benefit from these protections. This helps mitigate for potential economic and social losses to the community and meets OPAC’s policy guidance of avoiding, to the extent practicable, potential adverse social and economic effects on ocean users and ocean-dependent communities.

The proposed administrative rules reflect discussions with and guidance from the legislature, OPAC, and the community teams that put forth marine reserve and marine protected area proposals. Therefore, staff recommends that the Commission adopt the rules as recommended.

**OPTIONS**

1. Adopt the rule language as presented in Attachment 6 that will regulate fish and wildlife harvest in the Otter Rock and Redfish Rocks marine reserves and Redfish Rocks marine protected area.
2. Modify the proposed rules.
3. Take no action at this time.

**STAFF  
RECOMMENDATION**

1. Option 1.

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| <b>DRAFT MOTION</b>   | I move to adopt OAR 635-012-0020 through 0060 as recommended by staff and listed in Attachment 6 of this exhibit. |
| <b>EFFECTIVE DATE</b> | Upon filing.  |