

**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife, Fish division

635

Agency and Division

Administrative Rules Chapter Number

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**RULE CAPTION**

Adoption of Regulations Governing Marine Reserves and Protected Areas in Oregon's Territorial Sea

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

		Commission Room Oregon Dept. of Fish & Wildlife 3406 Cherry Avenue NE Salem, OR 97103	
December 11, 2009	08:00 a.m.		Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.***RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR Chapter 635, Division 012 (new division) rules as determined justified.**AMEND:****REPEAL:****Stat. Auth.:** ORS 496.138, 496.146, 506.036, 506.109, 506.119, and 506.129**Other Auth.:****Stats. Implemented:** ORS 496.162 and 506.129**RULE SUMMARY**

These adopted rules will regulate hunting and fishing activities in the Otter Rock and Redfish Rocks Marine Reserves and the Redfish Rocks Marine Protected Area. The proposed rules prohibit fishing for, hunting for, or take of any fish or wildlife species in the marine reserves; and allow for removing crab pots and other fishing gear; scientific research; transiting, drifting, or anchoring; and non-extractive activities. In the marine protected area, the proposed rules prohibit and allow the same activities as in marine reserves, with the addition of allowing commercial and recreational salmon trolling and crabbing for Dungeness and red rock crab.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 11, 2009**Last Day for Public Comment**

(Last day to submit written comments to the Rules Coordinator)



Lance Thomson

October 15, 2009

Signature

Printed name

Date

\* Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish and Wildlife, Fish Division

635

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Adoption of OAR Chapter 635, Division 012, regulations related to Marine Reserves and Protected Areas in Oregon's Territorial Sea.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Adoption of Regulations Governing Marine Reserves and Protected Areas in Oregon's Territorial Sea.

Statutory Authority: ORS 496.138, 496.146, 506.036, 506.109, 506.119, and 506.129

Other Authority:

Stats. Implemented: ORS 496.162 and 506.129

Need for the Rule(s): Oregon House Bill 3013 (2009) directs the Oregon Department of Fish and Wildlife and other relevant state agencies to adopt rules to establish, study, monitor, evaluate, and enforce a pilot marine reserve at Otter Rock and a pilot marine reserve and marine protected area at Redfish Rocks. These proposed rules comply with HB 3013 by regulating fishing and hunting activities in the marine reserves and marine protected area.

Documents Relied Upon, and where they are available:

1. Oregon House Bill 3013 (2009).
2. November 29, 2008 letter and attachments from Scott McMullen, Chair, Oregon Ocean Policy Advisory Council to Governor Theodore R. Kulongoski, Re: Recommendations from OPAC on Marine Reserves.
3. Staff report for the Oregon Fish and Wildlife Commission hearing of December 11, 2009.

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 3406 Cherry Avenue NE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact, including Statement of Cost of Compliance: See attached.

How were small businesses involved in the development of this rule?

Department staff conducted three public meetings to receive input on the proposed rules: October 20, 2009, in Salem; October 21, 2009, in Port Orford; and October 22, 2009, in Otter Rock.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The proposed rules are being developed and finalized through an extensive public process. Department staff solicited input from members of the commercial and recreational fishing communities, conservation community, local coastal communities, and the general public. Department staff conducted three public meetings to receive input on the proposed rules: October 20, 2009, in Salem; October 21, 2009, in Port Orford; and October 22, 2009, in Otter Rock.

  
Signature

Lance Thomson  
Printed name

October 15, 2008  
Date

**Fiscal and Economic Impact Statement for the December 11, 2009 Hearing  
In the Matter of Rules Relating to the Establishment of  
Two Pilot Marine Reserves and a Marine Protected Area**

Fiscal and economic impact: Rule changes are being proposed to establish and govern Marine Reserves at two pilot sites: 1) Otter Rock near Depoe Bay 2) Redfish Rocks near Port Orford. The proposed rules would also require the study, monitoring, evaluation, and enforcement of these pilot sites. The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only state agencies that might be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW), the Oregon State Police (OSP), The Department of State Lands (DSL), and the Department of Parks and Recreation. In July of 2011, prohibitions on harvest will begin on the areas designated as marine reserves. OSP enforcement will be a critical part of the plan for marine reserves. Costs will be incurred for enforcement personnel as well as any equipment required for monitoring. One option for enforcement is to set up a radar system on both pilot marine reserves and monitor activities through a camera. Oregon State Police estimate that a response to the site would be necessary once every week for Redfish Rocks and once every two weeks for Otter Rock. These four hour responses for two officers to investigate the site by boat would require \$110,000 per biennium in overtime costs. There would also be additional costs associated with purchase and maintenance of surveillance (radar/camera) equipment to monitor the reserves. These cost estimates are subject to change as more information becomes available to the Oregon State Police.

House Bill 3013 has also required DSL and Oregon Department of Parks and Recreation to adopt rules pertaining to the marine reserves and marine protected areas. The rules established by these agencies will reflect the areas over which they have jurisdiction. Any costs pertaining to the marine reserves for these agencies will be a result of HB 3013 and their own rules, so this rulemaking, by itself, will not affect these agencies.

With the passage of House Bill 3013, ODFW is required to develop a work plan to assess the biological, social, and economic aspects of the two pilot sites and four other areas where public processes may result in future marine reserve proposals. Through Policy Option Package 102 in the 2009-2011 Budget, ODFW may hire up to 8 new staff to meet the statutory requirements for site evaluation. These include:

- 1) 1 Full-Time Natural Resource Specialist 4
- 2) 2 Full-Time Natural Resource Specialist 3's
- 3) 1 Full-Time Natural Resource Specialist 2
- 4) 3 Full-Time Experimental Biology Aides
- 5) 1 Full-Time Supervising Fish and Wildlife Biologist

House Bill 3013 also requires that ODFW establish these rules to study, monitor, evaluate, and enforce the two pilot sites. The studies of the pilot sites will include socioeconomic evaluation and surveys of the habitats and biological resources of the marine reserves. It is expected that some portion of the staff time that will be allocated to meeting the statutory requirements for evaluation of all six areas will be spent on the two sites that are in this rulemaking.

B. Units of local government which could be affected by harvest management rules include Port Authorities and County Governments. Port Authorities may derive revenues from the provision

of moorage and facilities for the off-loading of catches. The restriction of commercial fishing in some areas may redistribute or reduce the landings made in local areas. It is expected that some commercial fishing operations will adjust to the marine reserves by fishing in alternate spots, and that this will mitigate some of the negative effects on landings. Information will become available as the socioeconomic effects of marine reserves are monitored. A study on the Port Orford stewardship area completed by the Port Orford Ocean Resource Team and Golden Marine Consulting (POORT/GMC) gives information on the Redfish Rocks reserve. The stewardship area is an area defined by POORT for their planning purposes, and only a small portion of the stewardship area would ultimately become a marine reserve or a marine protected area.

Most of these fishing opportunities within stewardship areas in state waters were preserved. In the area that is classified as a stewardship area and state waters, only 0.00% to 2.10% of Port Orford's commercial fisheries within the areas were curtailed due to marine reserve designation. For example, 52% of Port Orford's Dungeness Crab fishery value falls within the relevant stewardship area/state waters. Only 0.96% of the value of Port Orford's Dungeness Crab fishery within the stewardship area/state waters is displaced due to a marine reserve. So, in total, only 0.50% of the total value of Port Orford's Dungeness Crab fishery is displaced due to the marine reserve. This can be considered an upper bound on the value lost of the fishery for Port Orford, as some fishing can move to alternate areas. The study did not include fishing in the stewardship area by commercial fishers from ports other than Port Orford. Information is not available on the extent of alternative fishing areas. It is difficult to estimate the effect the pilot marine reserve will have on the port districts and county governments, but effects are expected to be relatively minor, given the low percentage of displacement of local fisheries.

Comparable information is not available for the Otter Rock marine reserve. The site was proposed through a collaborative community process which included fishing interests that use the area and took into account impacts to the fisheries through industry participation. Site selection was designed to minimize negative economic impacts.

C. The public could be affected by the adoption of these rules: Marine reserve designation at the pilot sites would eliminate sport and commercial fish harvest within the reserves. Some of the harvest will be displaced to another area or another fishery, but some harvest may be eliminated due to the closure of these areas.

If a commercial fishing vessel operates in a designated area, it can be assumed that the fisher believes that the area will give the highest catch rate or highest value catch for the costs of fishing. When fishing is eliminated from that area, such as in a marine reserve, costs could be increased or catch per unit effort could be decreased as a result. This is likely to have some impact on the net returns earned by commercial fishers. The degree of the reduction of these net returns is the subject of further study, but information is not currently available on the exact costs to the commercial fishery of the marine reserve designation. If any landings are eliminated, there would be associated impacts on the processing industry and commercial fishers in terms of personal income.

The Redfish Rocks marine reserve has an economic loss analysis as part of the Port Orford Ocean Resource Team/Golden Marine Consulting (POORT/GMC) proposal. The figures represent the amount of displacement of commercial fishing activity as a result of the marine reserve designation. It is likely that some of the displaced fishing will be relocated to other areas, and therefore these estimates represent an upper bound on the losses from the marine reserves. Table 1 is derived from Table 5 of the POORT proposal on page 18. Similar information is not available for the Otter Rock pilot reserve.

**Table 1: Displacement of Commercial Fisheries at Redfish Rocks by Area and Value**

	Species	Percent of Total Local Fishing Grounds that are within the Stewardship Area and State Waters	Fishing Grounds Displaced by the Marine Reserve as a Percentage of Fishing Grounds that are within the Stewardship Area and State Waters	(Derived) Percentage of the Total Local Fishing Grounds that are in the Marine Reserve
<b>Area</b>	Dungeness Crab	20.03 %	1.29 %	0.26 %
	Fresh Rockfish	20.19 %	2.14 %	0.43 %
	Halibut	12.38 %	0.00 %	0.00 %
	Live Rockfish	27.24 %	2.42 %	0.66 %
	Sablefish	0.09 %	0.00 %	0.00 %
	Salmon	14.30 %	1.61 %	0.23 %
<b>Value</b>	Dungeness Crab	52.26 %	0.96 %	0.50 %
	Fresh Rockfish	35.15 %	0.11 %	0.04 %
	Halibut	4.10 %	0.00 %	0.00 %
	Live Rockfish	67.53 %	0.62 %	0.42 %
	Sablefish	0.06 %	0.00 %	0.00 %
	Salmon	31.47 %	2.10 %	0.66 %

The public could also be affected by the reduction in sport fishing opportunities that result from the prohibition of harvest from the marine reserve areas. Detailed information on the spatial distribution of sport fishing activity related to marine reserves is not available, but it is likely that the two pilot reserves will have some immediate negative effect on sport fishing opportunity. At Redfish Rocks, the coastal shoreline inter-tidal habitats are excluded from the marine reserve to remain open to clamming.

Despite the displacement of fishing opportunity, the marine reserves could have a positive impact on both the sport and commercial fisheries by helping to support fish populations.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

#### References:

Port Orford Ocean Resource Team and Golden Marine Consulting, Port Orford Stewardship Area Proposal, Prepared for the Oregon Ocean Policy Advisory Council, September, 2008.