



AGENDA ITEM SUMMARY

BACKGROUND

Southern Resident orcas (*Orcinus orca*, SROs) were listed as endangered under the Oregon Endangered Species Act (OESA) in February 2024 by the Oregon Fish and Wildlife Commission (Commission). An OESA listing primarily affects management decisions made on state-owned, managed, or leased lands, including lands where state agencies hold recorded easements.¹ For the purposes of the OESA, lands include state waters. Private lands are not directly affected by the OESA (ORS 496.192). Oregon’s Territorial Sea (waters and seabed) extends from the coastline seaward for three nautical miles, and the 1967 Oregon Beach Bill established public ownership, or easement through private lands, for all 362 miles of Oregon’s coastline.

Under the OESA, survival guidelines adopted by the Commission for a listed species apply to state land owning or managing agencies in the absence of an approved endangered species management plan (ESMP). Agencies whose lands/waters have a role to play in conservation of an endangered species are required to develop an ESMP (ORS 496.182(8), OAR 635-100-0140(6)). Accordingly, in most instances, survival guidelines serve as interim protection measures until ESMPs are prepared and approved by applicable state agencies (required within 18 months of listing) and reviewed and approved by the Commission (required within 24 months of listing).

Under the OESA, within four months of the listing of an endangered species, the Commission, in consultation and cooperation with the state land owning and managing agencies, is required to determine which agencies own or manage lands/waters that can play a role in conservation of the species (ORS 496.182(8)(a)(A), OAR 635-100-0140(1)). To make this determination, the Commission and the land owning or managing agency must first consider the species’ biology and the geography of the land base to determine if the species or its habitat is found on state land or in state waters. If the species or its habitat is found on land or in waters owned or managed by the state agency, the Commission and the agency will then consider the impact that the agency’s actions may have on the species or its habitat. If the species or its habitat is not found on land or in waters owned or managed by a state agency, the Commission shall determine that the lands/waters do not have a role to play in the conservation of the species (OAR 635-100-0140(2)).

The Commission delegated consultation and coordination duties related to the SRO listing to ODFW’s Director at the March 15, 2024, meeting (Attachment 2). The department engaged with the appropriate state land owning and managing agencies and developed a recommended list of agencies whose lands/waters can play a role in the conservation of SROs. Following Commission approval of the list, the department will continue to work with those agencies as they determine their role in SRO conservation and prepare ESMPs, which the agencies will submit to the Commission for review within 18 months of the listing decision (within 18 months of February 21, 2024).

¹ In this Agenda Item Summary, state agencies that own or manage such lands are referred to as “state land owning or managing agencies”.

In addition to performing the state agency consultation duties delegated to it by the Commission, the department also participated in a coordination meeting with NOAA and Washington state agencies on SRO-related issues and worked to develop an SRO webpage. Although ODFW had applied for a federal grant to help fund post-listing activities related to SRO conservation, we recently learned that the department did not receive the grant.

PUBLIC INVOLVEMENT

- Consulted with state agencies listed in OAR 635-100-0160 as “state land owning or managing” agencies whose lands/waters have a potential role to play in SRO conservation.
- Addressed questions of interested persons, including the news media.
- Developed and updated SRO related webpages to help keep the public informed of the post-listing process and to facilitate public involvement.
- All materials for the Commission’s review, including this Agenda Item Summary, were posted to the ODFW website to provide the public with the opportunity to review the materials and provide comment prior to (in writing, see Attachment 3) or (orally) during the Commission meeting.

ISSUE 1

Determination of state land owning and managing agencies whose lands/waters (where SROs or their habitat are found) can play a role in SRO conservation.

ANALYSIS

For the purposes of determining which state agencies own or manage lands/waters that can play a role in the species’ conservation, OAR 635-100-0160(1) requires that the Commission consider the following agencies:

- (a) Oregon Department of Fish and Wildlife;
- (b) Oregon Department of Forestry;
- (c) Oregon Parks and Recreation Department;
- (d) Oregon Department of Administrative Services;
- (e) Oregon Division (now Department) of State Lands (all proprietary programs);
- (f) State Land Board;
- (g) Oregon Department of Education;
- (h) Oregon Department of Transportation;

- (i) Oregon Military Department;
- (j) Oregon State Hospital;
- (k) Department of Veteran’s Affairs (except as provided in ORS 496.182(6));
- (l) Department of Corrections;
- (m) Oregon State Board of Higher Education; and
- (n) Any other state agency that owns, leases or holds a recorded easement for land.

The criteria that the department used to identify state lands/waters with a potential role to play in SRO conservation included waters over submerged and submersible state lands where SROs or their habitat are found. Department staff identified three agencies which own or manage state lands/waters that meet these criteria and consulted/coordinated with them. We discussed components of SRO biology and habitat use, as summarized in the department’s January 2024 Biological Assessment, as well as the geography of the land base (submerged and submersible lands as defined in ORS 274.005) and the relationship of these factors to the agency’s management responsibilities and actions.

After consideration of input received during agency consultations, staff recommends that the Commission approve and notify the following state agencies that they own or manage lands/waters where SROs or their habitat are found and that these state lands/waters can play a role in the conservation of SROs in Oregon:

1. Oregon Department of Fish and Wildlife (ODFW);
2. Oregon Department of State Lands (ODSL); and
3. Oregon Parks and Recreation Department (OPRD).

The department makes this recommendation for the following reasons:

- ODFW owns and manages state lands/waters where SROs and/or their habitat are found. ODFW manages fisheries in Oregon’s Territorial Sea where SROs are present during certain times of the year (primarily winter and spring). The agency also operates salmon hatcheries, some of which might be able to increase production of Chinook salmon—an important prey item for SROs. Finally, ODFW can conduct outreach and education activities to promote awareness of SROs in Oregon and the environmental challenges they face.
- ODSL owns and manages state lands/waters where SROs and/or their habitat are found. ODSL has jurisdiction over the submerged lands of the Territorial Sea between the point of extreme low tide and the three-mile mark (Figure 1). Its proprietary branch authorizes use of the seafloor, including but not limited to placement of fiber optic cables and installation of wave and wind energy devices. Noise generated by these activities has the potential to interfere with SRO communication and foraging efficiency as the orcas travel along the Oregon Coast.
- OPRD owns and manages state lands/waters where SROs and/or their habitat are found. Oregon’s Ocean Shore State Recreation Area (Ocean Shore) is the land between the point of extreme low tide and the statutory vegetation line as described in ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland (Figure 1). The Ocean Shore is administered as a state recreation area by OPRD. As such, OPRD

regulates activities within the Ocean Shore, including recreational activities, natural product removal, and Ocean Shore alteration and construction activities. Permitting of pipelines and cables (e.g., for communications and renewable energy) beneath the Ocean Shore falls within the scope of OPRD’s management responsibilities. ODSL typically is the landowner within Oregon’s Territorial Sea (see Figure 1). Due to the ability of sound waves to travel long distances through water, noise associated with construction or installation activities in the submersible land area of the Ocean Shore has the potential to affect SRO communication and foraging further offshore.² In addition to OPRD’s land management functions, outreach and education are an important part of the agency’s activities on the Oregon Coast. OPRD has been organizing the Oregon Whale Watch program for decades and its Whale Watching Center near Depoe Bay is extremely popular with both residents and non-residents. Therefore, along with ensuring Ocean Shore construction activities are carried out in a manner consistent with SRO conservation, OPRD can also play an important role in promoting awareness of SROs and their challenges in Oregon.

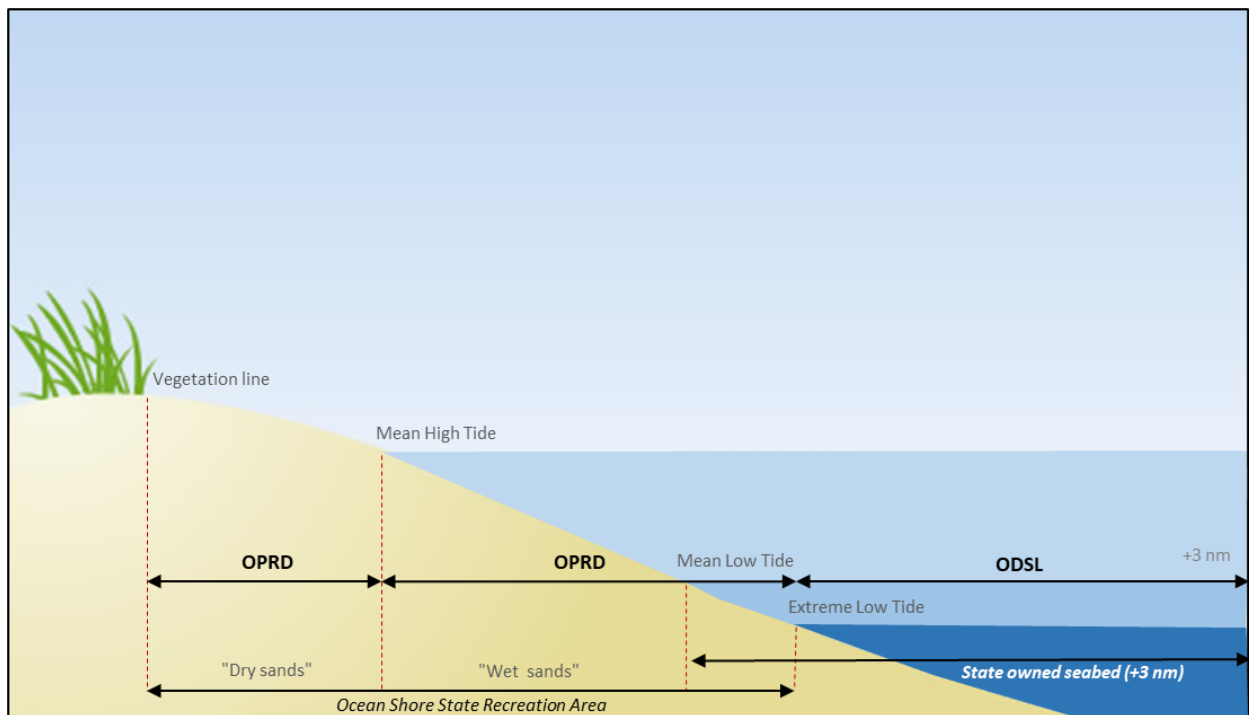


Figure 1. General state agency management authority over lands of Oregon’s Territorial Sea and Ocean Shore.

² OPRD managed lands above mean high tide, in the “dry sands” area (Figure 1), would not play a role in SRO conservation because neither the species nor its habitat is found in that area.

OPTIONS

1. Approve the staff recommended list of state lands/waters that can play a role in the conservation of SROs, listed by the relevant state land owning or managing agency.
2. Modify the staff recommended list of state land owning or managing agencies whose lands/waters can play a role in the conservation of SROs.

STAFF RECOMMENDATION

Option 1. Approve the staff recommended list of state lands/waters that can play a role in the conservation of SROs, listed by the relevant state land owning or managing agency.

DRAFT MOTION:

I move to determine that the state lands/waters owned or managed by ODFW, ODSL, and OPRD can play a role in the conservation of SROs. Staff is directed to prepare, on behalf of the Commission, a letter for signature by Chair Wahl to notify these agencies of the Commission's determination.

Effective Date: *Upon Approval*