

DEPARTMENT OF STATE LANDS

DIVISION 142

RULES GOVERNING THE ESTABLISHMENT AND MANAGEMENT OF MARINE RESERVES AND MARINE PROTECTED AREAS IN THE TERRITORIAL SEA

141-142-0010 Purpose and Applicability

This division:

- (1) Governs the State Land Board establishment and Department of State Lands (Department) management of marine reserves and marine protected areas in the Territorial Sea.
- (2) Describes uses that the Department may authorize within areas designated as a marine reserve or marine protected area.
- (3) Identifies areas of state-owned submerged and submersible land in the Territorial Sea managed by the Department that the State Land Board has designated as a marine reserve or marine protected area.

141-142-0015 Definitions

As used in this division, unless the context requires otherwise:

- (1) **“Authorization”** means a lease, registration, short-term access authorization, temporary use authorization, public facility license, easement or other authorization the Department grants that allows a person to use, or place a structure in, on, under or over state-owned submerged land, state-owned submersible land, or both in the Territorial Sea.
- (2) **“Department”** means the Department of State Lands.
- (3) **“Extractive Activity”** means any human effort to draw out or forth any living or non-living marine resource.
- (4) **“Extreme Low Water”** means the lowest elevation reached by the sea as recorded by a water level gauge during a given period. Extreme low water is generally seaward of the “line of ordinary low water” as defined in ORS 274.005(3).
- (5) **“Marine Protected Area”** means any area of the marine environment that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources therein.
- (6) **“Marine Reserve”** is an 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.
- (7) **“Mean High Water”** is a tidal datum. It is the average of all the high water heights observed over the National Tidal Datum Epoch. For stations with shorter series, comparison of simultaneous observations with a control tide station is made in order to derive the equivalent datum of the National Tidal Datum Epoch. For purposes of the Department’s jurisdiction, Mean High Water corresponds generally with the “line of ordinary high water” as defined in ORS 274.005(3).
 - (8) **“National Tidal Datum Epoch”** means the specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values (e.g., mean lower low water, etc.) for tidal datums. It is necessary for standardization because of periodic and apparent secular trends in sea level. The present National Tide Datum Epoch is 1983 through 2001 and is actively considered for revision every 20-25 years. Tidal datums in certain regions with anomalous sea level changes are calculated on a Modified 5-Year Epoch.
 - (9) **“Redfish Rocks Marine Protected Area”** means the area within Oregon’s Territorial Sea as described in OAR 141-142-0040 that is protected from all extractive activities except those expressly provided for in the administrative rules regarding what extractive activities are allowed within this area.
 - (10) **“Removal-Fill Permit”** means an authorization granted by the Department governing the removal, fill, alteration, or any combination thereof of material within the waters of the State of Oregon as provided in ORS 196.668 to 196.692 and ORS 196.800 to ORS 196.990.
 - (11) **“State Land”** as provided in ORS 273.006(8) means public land controlled by the Department.
 - (12) **“Submerged Land”** as provided in ORS 274.005(7), means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal, except as provided in ORS 274.705.
 - (13) **“Submersible Land”** as provided in ORS 274.005(8), means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal, except as provided in ORS 274.705.
 - (14) **“Territorial Sea”** as provided in ORS 196.405(5), means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.
 - (15) **“Territorial Sea Plan”** as provided in ORS 196.405(6), means the plan for Oregon’s territorial sea. In addition to the territorial sea as defined in

section (12), the scope of the territorial sea plan includes the “ocean shore” as defined in ORS 390.605.

141-142-0020 General Provisions

- (1) The Department will only grant an authorization or a removal-fill permit for a regulated removal-fill activity if the use, or removal, fill or alteration of material is necessary to study, monitor, evaluate, enforce, protect or otherwise further the studying, monitoring, enforcement and protection of the marine reserve or marine protected area.
- (2) The Department will honor the terms and conditions of any valid authorization (including any provisions providing for a right of renewal) previously granted by the Department for an existing use within an area designated as a marine reserve or marine protected area if the holder of the authorization is, and continues to be in full compliance with the terms and conditions of the authorization.
- (3) The Department will condition any authorization to use or place a structure on, in or over state-owned submerged and submersible land in an area designated as a marine reserve or marine protected area to require that the holder receive all other authorizations required by the Department (such as a Removal-Fill Authorization under ORS 196.800 to 196.990) and other local, state, and federal entities before using the area.
- (4) Any person applying to the Department for an authorization to place any structure on, in or over state-owned submerged and submersible land in an area designated as a marine reserve or marine protected area must describe in the application how they will remove the structure pursuant to the requirements of the Territorial Sea Plan.
- (5) Notwithstanding the provisions of ORS 274.885 to ORS 274.895, no person may harvest or remove any kelp or other seaweed for any purpose within an area designated as a marine reserve or marine protected area unless expressly authorized by the Department to do so in order to study, monitor, evaluate, enforce or otherwise further the purpose of the marine reserve or marine protected area.

141-142-0025 Establishing a Marine Reserve or Marine Protected Area

The State Land Board will establish marine reserves and marine protected areas by adoption of an amendment to this division.

Areas Established As Marine Reserves Or Marine Protected Areas

141-142-0030 Otter Rock Marine Reserve

- (1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Otter Rock Marine Reserve:

- (a) Beginning at a point at the northwest corner of Gull Rock at Latitude 44° 45.175' (44° 45' 10.5" N), Longitude -124° 04.53' (124° 4' 31.8" W) (Point A);
 - (b) Then east to Latitude 44° 45.175' (44° 45' 10.5" N), Longitude -124° 3.8583' (124° 3' 51.5" W) (Point B) at approximately the MHWL;
 - (c) Then following the MHWL to Latitude 44° 44.7933' (44° 44' 47.6" N), Longitude -124° 3.7833' (124° 3' 47" W) (Point C);
 - (d) Then following longitude -124° 3.7833' (124° 3' 47" W) south to Latitude 44° 44.7283' (44° 44' 43.7"N) (Point D) at approximately the ELWL;
 - (e) Then following the ELWL to Latitude 44° 43.315' (44° 43' 18.9"N), Longitude -124° 3.6567' (124° 3' 39.4" W) (Point E);
 - (f) Then west to Latitude 44° 43.315' (44° 43' 18.9" N), Longitude -124° 4.2' (124° 4' 12" W) described as the southwest corner of Whale Back Rock (Point F);
 - (g) Then in a northerly direction back to the point of beginning (Point A).
- (2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

141-142-0035 Redfish Rocks Marine Reserve

- (1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Redfish Rocks Marine Reserve:
- (a) Beginning from a point at Latitude 42° 42.54' (42° 42' 32.4"N), Longitude -124° 29.64' (124° 29' 38.4" W) (Point A);
 - (b) Then east to Latitude 42° 42.96' (42° 42' 57.6" N), Longitude -124° 27.78' (124° 27' 46.8" W) (Point B) at approximately the ELWL;
 - (c) Then following the ELWL south to Latitude 42° 41.52' (42° 41' 31.2" N), Longitude -124° 27.18' (124° 27' 10.8" W), described as a point near the middle of Coal Point (Point C);
 - (d) Then west to Latitude 42° 41.16' (42° 41' 9.6" N), Longitude -124° 28.86' (124° 28' 51.6" W) (Point D);
 - (e) Then in a northerly direction back to the point of beginning (Point A).
- (2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

141-142-0040 Redfish Rocks Marine Protected Area

- (1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Redfish Rocks Marine Protected Area:

- (a) Beginning at a point at the Territorial Sea boundary at Latitude $42^{\circ} 41.64'$ ($42^{\circ} 41' 38.4''$ N), Longitude $-124^{\circ} 33.66'$ ($124^{\circ} 33' 39.6''$ W) (Point A);
 - (b) Then east to Latitude $42^{\circ} 42.54'$ ($42^{\circ} 42' 32.4''$ N), Longitude $-124^{\circ} 29.64'$ ($124^{\circ} 29' 38.4''$ W) (Point B);
 - (c) Then south to Latitude $42^{\circ} 41.16'$ ($42^{\circ} 41' 9.6''$ N), Longitude $-124^{\circ} 28.86'$ ($124^{\circ} 28' 51.6''$ W) (Point C);
 - (d) Then west to Latitude $42^{\circ} 40.2'$ ($42^{\circ} 40' 12''$ N), Longitude $-124^{\circ} 32.7'$ ($124^{\circ} 32' 42''$ W), at the boundary of the Territorial Sea (Point D);
 - (e) Then in a generally northerly direction, along the western boundary of the Territorial Sea, back to the point of beginning (Point A).
- (2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

September 15, 2009

DEPARTMENT OF STATE LANDS

**NOTICE OF:
AVAILABILITY OF PROPOSED RULES FOR GOVERNING THE
ESTABLISHMENT OF, AND USES WITHIN MARINE RESERVES AND
MARINE PROTECTED AREAS
AND
PUBLIC HEARINGS CONCERNING THESE RULES**

What Is This Notice About?

House Bill 3013 provides that the State Land Board 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...”

These rules describe what uses the Department of State Lands may authorize within areas designated as a marine reserve or marine protected area, and identify areas of state-owned submerged and submersible land in the Territorial Sea that have been designated by House Bill 3013 as a marine reserve or marine protected area.

This notice is to advise you:

- **That these rules are now available for public review,**
- **Where you can obtain a copy of these rules, and**
- **Of the dates, locations and times of public hearings concerning these rules.**

We want to know what you think of these rules and to hear any comments you may have concerning them.

Where Can I Obtain A Copy Of These Rules?

You may view a copy of these rules on DSL’s website: www.oregonstatelands.us They are listed under “current” items on this page. If you do not have access to the internet, you may request a copy by calling Ms. Liz Martino at 503-986-5239, or by writing to her at the following address:

Ms. Liz Martino
Rules Coordinator
Oregon Department of State Lands
775 Summer Street N.E., Suite 100
Salem, Oregon 97301-1279

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How Long Is The Public Comment Period?

The public comment period for these draft rules will remain open until **5 PM, Tuesday, November 17, 2009**. We hope to take these rules to the Land Board for its consideration at the Board's December 2009 meeting.

How Do I Submit Comments?

Comments may be submitted either in writing by U.S. Mail to the Department of State Lands (attention, Ms. Liz Martino, Rules Coordinator) at the above address, or via e-mail at: marinereserverules@dsl.state.or.us and must be received by DSL prior to the close of the public comment period.

Location, Time and Date of Public Hearings

DSL will conduct three public hearings concerning these rules. You are welcome to attend one or all three of them.

Tuesday, October 20, 2009, 1-3 PM	State Lands Building Land Board Room 775 Summer Street N.E. Salem, Oregon
Wednesday, October 21, 2009, 7-9 PM	Port Orford Public Library 1421 Oregon Street Port Orford, Oregon
Thursday, October 22, 2009, 7-9 PM	The Inn at Otter Crest 301 Otter Crest Drive Otter Rock, Oregon

Questions?

If you have any questions concerning the proposed rules or hearings, please contact Ms. Liz Martino at the addresses/numbers listed above.

Attachments

- **Notice of Proposed Rulemaking Hearing** submitted to Oregon's Secretary of State for publication in the October 1st Oregon Bulletin concerning the Salem, Port Orford and Otter Rock public hearings.
- **Statement of Need and Fiscal Impact** submitted to Oregon's Secretary of State for publication in the October 1st Oregon Bulletin.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking
accompanies this form.

Department of State Lands	Land Management	141
Agency and Division	Administrative Rules Chapter Number	

Adopt rules governing the establishment of and uses within marine reserves and marine protected areas

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

In the Matter of: Adopting administrative rules governing the establishment of and uses within marine reserves and marine protected areas

Statutory Authority: ORS 183 - regarding administrative procedures and rules of state agencies; ORS 273 – regarding the creation and general powers of the Land Board; ORS 274 – regarding submerged and submersible land.

Other Authority: Oregon Constitution, Article VIII, Section 5

Stats. Implemented: Oregon Laws 2009, Chapter 847

Need for the Rule(s): These rules are needed to establish, study, monitor, evaluate and enforce the pilot marine reserve at Otter Rock and a pilot marine reserve and a marine protected area at Redfish Rocks as mandated by House Bill 3013 (enacted by the 75th Oregon Legislative Assembly in 2009). These rules describe what uses the Department of State Lands (DSL) may authorize within areas designated as a marine reserve or marine protected area, and identify areas of state-owned submerged and submersible land the Territorial Sea that have been designated by House Bill 3013 as a marine reserve or marine protected area.

Documents Relied Upon, and where they are available: House Bill 3013 (enacted by the 75th Oregon Legislative Assembly in 2009); the November 29, 2008 letter and attachments from Scott McMullen, Chair, Oregon Ocean Policy Advisory Council to Governor Theodore R. Kulongoski; Recommendations from OPAC on Marine Reserves. Both documents are available from the Department of State Lands.

Fiscal and Economic Impact: The only economic impacts, if any, on DSL would be the loss of potential revenue that the agency would receive from uses subject to payment of compensation to DSL that might be applied for in the future, but not authorized by DSL within a marine reserve or marine protected area. At this time, it is difficult to identify any such uses. Because DSL has not authorized any uses on state-owned land in either marine reserve or the marine protected area, nor has anyone advised the agency that they want to use the underlying state-owned land, it is not possible to determine the economic impacts, if any, on persons who may, in the future, want, but are not allowed use the land underlying each of these areas for purposes other allowed by these rules.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): These rules are not expected to have any fiscal impact on state agencies or units of local government. They only identify the geographic limits of the marine reserves and marine protected area established by House Bill 3013 and the uses that DSL may authorize within these areas.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: It is not anticipated that small businesses will be adversely impacted by these rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No additional reporting, recordkeeping or other administrative activities are anticipated to be required by these rules if adopted.

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor or administration are anticipated to be required by these rules if adopted.

How were small businesses involved in the development of this rule? A member of the Depoe Bay Near Shore Action Team and a member of the Port Orford Ocean Resource Team were members of the Rulemaking Advisory Committee (RAC). Both of these groups represent small businesses. In addition, the Executive Director of the Oregon Dungeness Crab Commission (which represents many small businesses involved in the harvest and processing of Dungeness crab) was invited to be on RAC, but did not participate.

Administrative Rule Advisory Committee consulted?: Yes, a rulemaking advisory committee was formed by the Department in the development of the amendments to these rules.

If not, why?:

Louise Solliday, Director

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007