

PARKS AND RECREATION DEPARTMENT

DIVISION 29

MARINE RESERVE AND MARINE PROTECTED AREA RULES

736-029-0010

Scope of Rules

This division governs the use of portions of the ocean shore as well as areas adjacent to state parks that the State Land Board has designated as a Marine Reserve or Marine Protected Area (OAR chapter 141, division 142). The Fish and Wildlife Commission has adopted restrictions on harvest of fish and wildlife resources (OAR chapter 635, division ____). The Department of State Lands (DSL) has adopted rules regarding authorized use within the marine reserves and marine protected areas. These rules shall go into effect when Oregon Department of Fish and Wildlife (ODFW) harvest prohibitions also become effective, which shall be on or before June 30, 2011.

Stat. Auth.: ORS 390.124 & 390.660

Stats. Implemented: ORS 390.635; 390.660, 2009 Or Laws, ch 847

Hist.

736-029-0020

Statutory Authority

(1) Pursuant to ORS 390.635 and 390.660, the Oregon Parks and Recreation Commission has:

(a) Complete jurisdiction and authority to administer as state recreation areas, all ocean shore areas owned by the state and all other public easements or other rights of access that the state holds on the ocean shore;

(b) Authority to protect and maintain such areas in a manner which will contribute to the general welfare of the public and the natural and cultural resources thereon;

(c) Authority to make regulations and provisions as it deems necessary for the use and administration of such areas.

(2) ORS 390.050 authorizes the Oregon Parks and Recreation Department (OPRD) director or the director's designees to enforce park and ocean shore area rules by citation authority.

Stat. Auth.: ORS 390.635; 390.660

Stats. Implemented: ORS 390.635; 390.660, 2009 Or Laws, ch 847
Hist.

736-029-0030

Definitions

For purposes of this division, unless the context requires otherwise, the following definitions apply:

(1) “Commission” means the State Parks and Recreation Commission.

(2) “Department” means the State Parks and Recreation Department, known as Oregon Parks and Recreation Department (OPRD).

(3) “Director” means the State Parks and Recreation Director.

(4) “Marine Reserve Area” means the ocean shore portion of the area designated by law to fall within the boundaries of a marine reserve established the State Land Board and identified in OAR chapter 141, division 142.

(5) “Marine Protected Area” means the ocean shore portion of the area designated by law to fall within the boundaries of a marine protected area established the State Land Board and identified in OAR chapter 141, division 142.

(6) “Natural product” means living or non-living natural products on the ocean shore, including marine plants, minerals, shells, rocks, and sand.

(7) “Ocean shore” as provided in ORS 390.605(2), means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. “Ocean shore” does not include an estuary as defined in ORS 196.800.

(8) “Ocean Shore Alteration Permit” means: a permit under ORS 390.640 for a structure, appurtenance or other addition, modification or alteration, including habitat restoration, constructed, placed or made on the ocean shore; a permit under ORS 390.715 for a pipeline, cable line, or conduit placed or made across or under the ocean shore; or a permit under ORS 390.725 for the removal of products from the ocean shore.

(9) “Salvage” or “Salvageable Object” means any object, thing or material, exclusive of drift logs, which is not in its natural state, and is not a “natural product of the ocean shore”, which is washed up or deposited on the ocean shore.

736-029-0040

General Restrictions

(1) In addition to all other regulations pertaining to the ocean shore, within an area designated as a Marine Reserve or Marine Protected Area, a person may not:

(a) Collect, pick, cut, mutilate or remove living or non-living natural products of the ocean shore;

(b) Give or offer food items to any wildlife; or

(c) Pursue, injure, or molest any wildlife or disturb their habitats;

(d) Dig up or remove any soil, rock, or fossil materials;

(e) Disturb or remove any archaeological, cultural, or historical material.

(2) In addition to all other regulations pertaining to the ocean shore, within an area designated as a Marine Protected Area, a person may not engage in any activity prohibited in subsection (1) except as expressly allowed in the rules establishing and regulating the Marine Protected Area.

(3) The Director may issue a written permit to a person to engage in one or more activity prohibited under subsection (1) or (2):

(a) If the person seeks to engage in a prohibited activity for scientific research or monitoring purposes that are consistent with the purposes of the Marine Reserve or Marine Protected Area;

(b) If the person seeks to engage in a prohibited activity to enforce prohibitions necessary to the purposes of the Marine Reserve or Marine Protected Area;

(c) If the person seeks to engage in a prohibited activity to provide for public education consistent with the purposes of the Marine Reserve or Marine Protected Area;

(d) If the person is a Native American collecting for personal consumption as part of their traditional cultural heritage in accordance with procedures established by the Department;

(e) If the person seeks to engage in activity prohibited under subsection (1) (e) that is:

(A) Otherwise consistent with the purposes of the Marine Reserve or Marine Protected Area, and

(B) Authorized by a permit issued by the Department under ORS 390.235.

(4) Pursuant to ORS 390.725(4), the Department will not issue any permits for the collection of natural products within a Marine Reserve Area or Marine Protected Area for the purpose of trade, sale or resale.

(5) In addition to regulations regarding “salvage” and “salvageable objects,” the Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in taking any action under OAR chapter 736, division 27 within such area(s).

(6) The Director or designee may allow periodic and emergency removal of driftwood, beached marine mammals, marine and upland debris, and other items if the Director determines the removal is:

(a) Necessary to assure the protection of natural resources or the safety, access, or recreational use of the ocean shore, and

(b) Otherwise consistent with the scientific research, monitoring, enforcement or protection of the Marine Reserve or Marine Protected Area.

(7) Any valid preexisting Ocean Shore Alteration Permit granted by the Department as provided in OAR chapter 736, division 20 but within an area designated as a Marine Reserve shall remain in effect if the holder of that permit is and continues to be in full compliance with the terms and conditions of the permit.

(8) The Department will only issue conditional Ocean Shore Alteration Permits within a Marine Reserve Area that require review by other state and federal agencies.

Stat. Auth.: ORS 390.124 & 390.660

Stats. Implemented: ORS 390.635 & ORS 390.660, ORS 390.725(4), 2009 Or Laws, ch 847

Hist.:

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Parks and Recreation Department	736-029		
Agency and Division	Administrative Rules Chapter Number		
Joyce A. Merritt OPRD, 725 Summer St NE, Ste C, Salem, OR 97301	joyce.merritt@state.or.us	503-986-0756	
Rules Coordinator	Address	E-mail Address	Telephone

RULE CAPTION

Rules governing Marine Reserves designated by State Land Board on portions of the ocean shore and areas adjacent to state parks.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Tuesday, October 20, 2009	1-3 pm	Dept of State Lands, 775 Summer St NE, Salem, OR 97301	Tony Stein
Hearing Date	Time	Location	Hearings Officer
Wednesday, October 21, 2009	7-9pm	Port Orford Public Library, 1421 Oregon St., Port Orford, OR 97465	Tony Stein
Hearing Date	Time	Location	Hearings Officer
Thursday, October 22, 2009	7-9pm	The Inn at Otter Crest, 301 Otter Crest Drive, Otter Rock, OR 97369	Tony Stein
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.

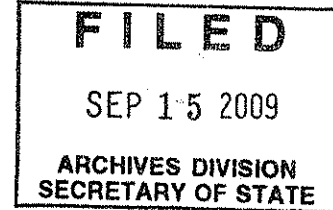
ADOPT: 736-029-0010, 736-029-0020, 736-029-0030, 736-020-0040

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:



Stat. Auth. : ORS 390.124; ORS 390.635; ORS 390.660

Other Auth.: Enrolled House Bill 3013 (2009 Legislative Session)

Stats. Implemented: ORS 390.635; ORS 390.660; ORS 390.725(4); 2009 Or Laws, ch 847

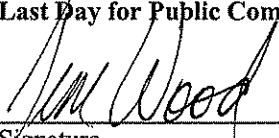
RULE SUMMARY

These rules provide governance and protection to Marine Reserves as designated by the State Land Board along the Oregon ocean shore and areas adjacent to state parks 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. Having Marine Reserves provides an additional tool to help protect, sustain or restore the nearshore marine ecosystem, its habitats, and species for the values they represent to present and future generations.

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.

5:00 p.m., Tuesday, November 17, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

	Tim Wood, Director	September 15, 2009
Signature	Printed name	Date

*Hearing 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. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Parks and Recreation Department

736-029

Agency and Division

Administrative Rules Chapter Number

Rules governing Marine Reserves designated by State Land Board on portions of the ocean shore and areas adjacent to state parks
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Adopting new rules to govern Marine Reserves

Statutory Authority: ORS 390.124; ORS 390.635; ORS 390.660

Other Authority: Enrolled House Bill 3013 (2009 Legislative Session)

Stats. Implemented: ORS 390.635; ORS 390.660; ORS 390.725(4); 2009 Or Laws, ch 847

Need for the Rule(s): The rules are needed to establish, study, monitor, evaluate and enforce the pilot marine reserve at Otter Rock as recommended by the Oregon Ocean Policy Advisory Council and mandated by House Bill 3013 (Oregon Laws 2009 chapter 847). OPRD's rules related to marine reserves are proposed to be included in a new division of OAR chapter 736 (Division 29). The rules will address extractive and disruptive activities on the portion of marine reserves (primarily rocky intertidal habitat) that includes the Ocean Shore State Recreation Area (OSSRA).

Documents Relied Upon, and where they are available:
Enrolled HB 3013 (2009 Legislative Session)

Fiscal and Economic Impact: **None.**

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): **None. The State Department of Fish and Wildlife and the Department of State Lands will prepare their own fiscal impact statements under separate rulemaking.**

2. Cost of compliance effect on small business (ORS 183.336): **None.**

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
Can't envision how small businesses would be affected.

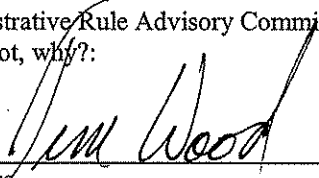
b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: **OPRD will use existing commissioned officers to meet the enforcement needs of established marine reserves within the OSSRA. All reporting, recordkeeping, and associated administrative functions required by commissioned officers will be incorporated into established procedures.**

c. Equipment, supplies, labor and increased administration required for compliance: **None.**

How were small businesses involved in the development of this rule? **Depoe Bay Near Shore Action Team.**

Administrative Rule Advisory Committee consulted?: **Yes.**

If not, why?:



Signature

Tim Wood, Director

Printed name

September 15, 2009

Date