

## **Standard Oregon Coastal Management Program (OCMP) Coastal Zone Conditions**

The federal Coastal Zone Management Act provides that federal actions affecting any use or resource of the coastal zone,\* including projects permitted by the U.S. Army Corps of Engineers (USACE), must be consistent with the enforceable policies of a State's federally approved coastal management program. Oregon's approved program, the Oregon Coastal Management Program (OCMP), is a "networked" program that integrates authorities of local governments and other state agencies. The coastal zone conditions contained in this document reflect the networked nature of the OCMP, and reference the specific applicable enforceable policies.

**In addition to all USACE national and regional permit conditions, permitted projects in Oregon's coastal zone must comply with the following coastal zone conditions.**

If an applicant chooses not to follow one or more of the coastal zone conditions, DLCDC will object to the permit issuance pursuant to 15 CFR § 930.63(e). In that instance, the permittee may appeal the state's objection by requesting that the Secretary of Commerce override the objection pursuant to 15 CFR 930, subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the USACE. The Secretary may collect fees from the permittee for administering and processing the override request.

\*Oregon's coastal zone generally includes the area lying between the Oregon/Washington border on the north, to the Oregon/California border on the south, seaward to the extent of the state's jurisdiction as recognized by federal law, and inland to the crest of the Coast Range Mountains, excepting:

- (a) The Umpqua River basin, where the coastal zone extends to Scottsburg;
- (b) The Rogue River basin, where the coastal zone extends to Agness; and
- (c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

### **CZ Condition 1. Consistency with Local Comprehensive Plans**

(1) Permitted projects must be consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, including the applicable estuary management plan, or the statewide land use planning goals where applicable. Permittee must obtain required permits or other authorizations from the applicable local government before initiating work under any USACE permit. Permittee are encouraged to provide USACE and the OCMP with verification of the local jurisdiction's approval in the form of a completed block ten (10) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 197, Comprehensive Land Use Planning Coordination]*

### **CZ Condition 2. Consistency with Removal-Fill Law**

(1) Permitted projects must be consistent with or not subject to the state requirements governing removal-fill in waters of the state. Permittee must obtain required permits or other authorizations from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) Projects requiring a DSL Removal-Fill permit must compensate for reasonably expected adverse impacts by complying to the full extent with DSL's compensatory mitigation requirements.

(3) Where DSL finds a project not subject to the Removal/Fill Law, permittee must submit to DSL any changes in project design or implementation that may reasonably be expected to require application of the Removal/Fill Law.

(4) All conditions placed on a Removal-Fill permit by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 196, Removal of Material; Filling]*

### **CZ Condition 3. Leases of State Lands**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of state lands. Permittee must obtain any required lease, license, or other authorization for the use of state lands or waters from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 274, Submersible and Submerged Lands]*

### **CZ Condition 4. Department of Environmental Quality**

(1) Permitted projects must be consistent with or not subject to the state requirements governing water quality. Permittee must obtain certification, if required, from the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process before any regulated work may begin.

(2) All conditions placed on a license, permit, or authorization by DEQ are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 468B, Water Quality]*

### **CZ Condition 5. Fish and Aquatic Life Passage**

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish passage (<http://www.dfw.state.or.us/fish/passage/>). Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) No work shall be authorized that does not provide for adequate passage of “aquatic life.” Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of this state and which are generally present in or around, or pass through the project site.

(3) This condition is effective only where ODFW regulations apply.

*[Enforceable Policy: ORS chapter 509, Additional Fishery Requirements]*

### **CZ Condition 6. Ocean Shore**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of the ocean shore. Permittee must obtain, if required, an ocean shore permit from the Oregon Parks and Recreation Department (OPRD) before any regulated work may begin.

(2) All conditions placed on an Ocean Shore permit by OPRD are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 390, Ocean Shores]*

### **CZ Condition 7. Aquaculture**

(1) Permitted projects must be consistent with or not subject to state requirements governing commercial aquaculture or mariculture cultivation of oysters, clams, and mussels. Permittee must obtain, if required, authorization from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 622, Shellfish]*

### **Guidance: Permits Requiring Individual Consistency Review**

The Oregon Department of Land Conservation and Development (DLCD) has not extended advance concurrence to, and will require individual review of, the following six categories of permits:

- 1) Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.
- 2) Any project utilizing NWP 29 or NWP 39 that requires a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.
- 3) Any permit where the project is within or directly impacts the following aquatic habitats of special concern: native eel grass beds, mature forested wetland, wetlands in dunal systems, estuarine wetlands (in natural or conservation management units only), state special management areas (including marine gardens, marine reserves, research reserves, state habitat refuges, marine protected areas, and shellfish preserves), kelp beds, rocky substrate in tidal waters (interpreted as all marine subtidal rock substrate and reefs and rocky intertidal shores), and native oyster beds, except for projects permitted under NWP 20, 22, 27, 32, and 38.
- 4) Any project utilizing NWP 48 Commercial Shellfish Aquaculture Activities
- 5) Any project utilizing NWP 53: Removal of Low-Head Dams unless a determination has already been provided in writing by the Oregon Department of Fish and Wildlife that native migratory fish (as defined in OAR 635-412-0005) were not historically (prior to 1859) nor currently present in the waters where the dam is to be removed or a fish passage approval/waiver has already been obtained in writing from the Oregon Department of Fish and Wildlife.
- 6) Any project that utilizes Nationwide Permit 54: Living Shorelines unless the project consists solely of wood, vegetation, or other living natural 'soft' elements.

The District Engineer shall be responsible for determining when proposed projects meet any of these circumstances. The discussion below provides additional guidance, and DLCD staff are available to assist in this determination. For projects not afforded advance concurrence, DLCD will undertake an individual review of the project to ensure consistency with the Oregon Coastal Management Program (OCMP).

DLCD is afforded 180 days (6 months) to conduct an individual review. The review starts when all necessary data and information (NDI) is received from the applicant. NDI includes applications for the federal permit and an analysis of potential coastal effects and whether project meets or how it plans to meet the enforceable

policies of the Oregon Coastal Management Program. Once NDI is received, the review period begins. DLCDC has a template analysis table available to help applicants assess coastal effects and consistency enforceable policies. If all necessary state permits have not been obtained at the end of 180 days, a stay agreement is signed to provide additional time for the applicant to receive permits/authorizations or an objection is provided.

### ***Territorial Sea***

Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Except for projects permitted under NWP 1: Aids to Navigation, DLCDC must individually review any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, for consistency with the OCMP. In addition, DLCDC will individually review any project which results in new or increased activity or impacts on or under the Territorial Sea.

Examples of projects requiring an individual review include:

- Construction of an offshore structure or platform;
- Installation of water-based renewable energy devices and related infrastructure;
- Installation of a buried or exposed cable;
- A new or expanded port facility which increases ship traffic in the Territorial Sea;
- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCDC's Coastal Management Program office.

### ***NWP 29: Residential Developments and NWP 39: Commercial and Institutional Developments***

DLCDC must individually review any project authorized by NWP 29 or 39 **and** requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Block ten (10) of the Joint Permit Application identifies such projects.

Examples of projects requiring an individual review include projects where block 10 indicates one of the following:

- The project is **not** consistent with the comprehensive plan;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCDC's Coastal Management Program office.

### ***Aquatic Habitats of Special Concern in the Coastal Zone***

Oregon's coastal zone contains high value and rare aquatic habitats, often associated with explicit enforceable policies of the OCMP. Except for projects permitted under NWP 20: Response for Oil and Hazardous Substances, NWP 22: Removal of Vessels, NWP 27: Aquatic Habitat Restoration, NWP 32: Completed Enforcement Actions, and NWP 38: Cleanup Hazardous/Toxic Waste, DLCDC must individually review any project which occurs within or directly impacts the following habitat types in the coastal zone:

- native eel grass beds,
- mature forested wetland,
- wetlands in dunal systems,
- estuarine wetlands (in natural or conservation management units only),

- state special management areas (including marine gardens, marine reserves, research reserves, state habitat refuges, marine protected areas, and shellfish preserves) (TS, excepting shellfish preserves)
- kelp beds (TS)
- and rocky substrate in tidal waters (interpreted as all marine subtidal rock substrate and reefs and rocky intertidal shores) (TS)
- native oyster beds

DLCD is compiling a data tool to assist the Corps in determining where these resources are in the coastal zone in addition to the information provided by the applicant. Some of these habitat types are located in the Territorial Sea (indicated with TS), which already receive an ICR under the above Territorial Sea category. Please direct any questions regarding specific projects to DLCDC's Coastal Management Program office.

***NWP 48: Commercial Shellfish Aquaculture Activities***

DLCD must individually review any project authorized by NWP 48: Commercial Shellfish Aquaculture Activities.

***NWP 53: Removal of Low-head Dams***

DLCD must individually review any project authorized by NWP 53: Removal of Low-head Dams ***unless*** a determination has already been provided in writing by the Oregon Department of Fish and Wildlife that native migratory fish (as defined in OAR 635-412-0005) were not historically (prior to 1859) nor currently present in the waters where the dam is to be removed ***or*** a fish passage approval/waiver has already been obtained in writing from the Oregon Department of Fish and Wildlife.

***NWP 54: Living Shorelines***

DLCD must individually review any project authorized by NWP 54: Living Shorelines unless the project consists solely of 'vegetation or other living natural 'soft' elements.

Examples of projects requiring an individual review include:

- Construction of projects including rock or cobble with no previous structure present
- Construction of projects that contain engineered rock/wood structures

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCDC's Coastal Management Program office.