

NOTICE OF PROPOSED RULEMAKING

CHAPTER 736

PARKS AND RECREATION DEPARTMENT

FILING CAPTION: Updating collection rules based on changes in Territorial Sea Plan Site Designations

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/03/2023 5:00 PM

HEARING(S):

DATE: 10/26/2023

TIME: 2:00 PM

OFFICER: Katie Gauthier

REMOTE MEETING DETAILS

MEETING URL: https://us06web.zoom.us/webinar/register/WN_RVGhrw-KR9eYDdaTobepew

PHONE NUMBER: 503-510-9678

SPECIAL INSTRUCTIONS:

Individuals must register prior to the hearing to receive the link to the zoom meeting. Register at: https://us06web.zoom.us/webinar/register/WN_RVGhrw-KR9eYDdaTobepew

NEED FOR THE RULE(S):

The Oregon Department of Land Conservation and Development (DLCD) adopted updates to Oregon's Territorial Sea Plan Rocky Habitat Management Strategy in April 2023. As a part of this update, rocky habitat sites are now eligible for one of three management designations: Marine Research Area, Marine Garden/Education Area and Marine Conservation Area. Goals, regulations and management practices differ for each type of designation.

The management areas and their respective goals were designated by DLCD after an extensive review process led by the Ocean Policy Advisory Council. To comply with the updated plan and management goals now included in the Rocky Habitat Management Strategy, OPRD will need to update our rule language around collection of marine plants and macroalgae in marine reserves and marine protected areas in OAR 736-021-0090(4)(b).

In addition, when opening 736-021-0090 for changes, OPRD is proposing removing language in section (3) that refers to requirements for enrolled tribal members to obtain a permit from OPRD prior to collecting natural products. This language is outdated and does not reflect current agency practices. Prior to proposing opening rulemaking, the agency offered consultation to all nine federally recognized tribes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Territorial Sea Plan- Rocky Habitat Management Strategy,
<https://www.oregonocean.info/index.php/territorial-sea-planning>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The department estimates the adoption of changes to OAR 736-021-0090 will have a positive racial equity impact on members of the nine federally-recognized tribes in Oregon. Removing outdated language that required enrolled members of one of the 9 federally recognized tribes in Oregon to obtain a permit before collecting natural products for traditional use will remove barriers to use of the ocean shore. While the department no longer requires the permit, the outdated language still in rule is a barrier to access

FISCAL AND ECONOMIC IMPACT:

The proposed amendments do not have an economic or fiscal impact. The department does not anticipate a significant change in collection of marine plants or macroalgae as a result of this rulemaking.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) No state agencies, local governments or members of the public are likely to be economically affected by the proposed rule amendments.

2) a) No small businesses are subject to the rules. (b) no reporting or record keeping activities required to comply. (c) No cost for professional services.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were involved in the changes to the Territorial Sea Plan and public process conducted by the Ocean Policy Advisory Council.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?This rulemaking is implementing technical changes made after extensive public outreach by OPAC during an amendment process to the Territorial Sea Plan.

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RULES PROPOSED:

736-021-0030, 736-021-0090

AMEND: 736-021-0030

RULE TITLE: Definitions

RULE SUMMARY: Adds definition for "Territorial Sea Plan"

RULE TEXT:

For purposes of this division, the definitions in ORS 358.905 and ORS 390.605 shall apply. In addition, the following definitions apply, unless the context requires otherwise:

- (1) "ATV" means All-Terrain Vehicle as described and defined in OAR 736-004-0015. ATV may also be referred to interchangeably as Off-Highway Vehicle (OHV).
- (2) "Cobble" means a rock fragment between about 2.5 inches and 10.2 inches wide, especially one that has been naturally rounded.
- (3) "Commission" means the Oregon Parks and Recreation Commission.
- (4) "Department" means the Oregon Parks and Recreation Department.
- (5) "Director" means the director of the Oregon Parks and Recreation Department.
- (6) "Domestic animal" means those animals whose food and shelter are provided by a human custodian.
- (7) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce the ocean shore state recreation area rules.
- (8) "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is a multi-agency, multi-jurisdictional recovery effort for the Western Snowy Plover. The full text of the "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is available from the State Parks and Recreation Department.
- (9) "Handler" means a person who brings a domestic animal onto the ocean shore state recreation area.
- (10) "Holdfast" means the part of a seaweed by which it fastens to the surface on which it grows.
- (11) "Marine Protected Area" means any area of the marine environment within Oregon's Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources in it. A marine protected area is an area established by the State Land Board and identified in OAR chapter 141, division 142.
- (12) "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. A marine reserve is an area established by the State Land Board and identified in OAR chapter 141, division 142.

(13) "Motorized vehicle or device" means any self-propelled means moving on wheels, runners, tracks or the like by which a person could travel or carry something, whether or not designed exclusively to transport or typically used on roads. This definition includes but is not limited to a motor vehicle as defined in ORS 825.005(9), motorized bicycles, motor scooters, ATVs, OHVs, recreational vehicles, trailers and other mobile equipment.

(14) "Natural Product" means living and non-living natural products on the ocean shore, including but not limited to marine plants, minerals, shells, rocks, and sand.

(15) "Non-Traditional Park Use" means any organized activity, gathering or use conducted in whole or in part within the boundaries of the ocean shore state recreational area, that is not a recreational use allowed by the posted park regulations or permitted under the provisions of this rule or divisions 10, 15 and 20 and which requires a special use permit under division 16.

(16) "Occupied site" means a department-owned or leased area, a privately or locally-owned area or an area adjacent to federal lands that has at least one nest or nesting attempt as identified by the department at the beginning of each western snowy plover nesting season in accordance with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(17) "Ocean shore state recreation area" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line or the line of established upland vegetation, whichever is farther inland, under the jurisdiction of the department that is used by the public for recreational purposes per ORS 390.605 (2) and (3).

(18) "Ocean shore resources" means any natural or human-made property, material, product, feature or structure in the ocean shore state recreation area.

(19) "OHV" means Off Highway Vehicle, also called ATV, see definition (1).

(20) "Park Employee" means an employee of the department.

(21) "Park Manager" means the supervisor or designated employee in charge of an ocean shore state recreation area.

(22) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(23) "Person" includes an individual, a public or private corporation, an unincorporated association, a partnership, a government or a governmental unit, or a non-profit entity.

(24) "Personal Use" means use that is directly by the individual for purposes other than monetary reward and not involving sale, barter, resale, or exchange of money.

(25) "Territorial Sea" as defined in ORS 196.405(5) means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(26) "Territorial Sea Plan" as defined in ORS 196.405(6) means the plan for Oregon's territorial sea.

(27) "Unoccupied sites" means actively managed department-owned or leased areas, privately or locally-owned areas or areas adjacent to federal lands that have been identified as potential nesting sites for western snowy plovers in concurrence with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(28) "Upland" means the land lying shoreward or generally easterly of the ocean shore state recreation area.

(29) "Violate" includes failure to comply.

(30) "Wet sand" means the area seaward of symbolic fencing (roping), signs, or both that are placed on the dry sand area.

STATUTORY/OTHER AUTHORITY: ORS 390.660

STATUTES/OTHER IMPLEMENTED: ORS 390.124, 390.635, 390.660

AMEND: 736-021-0090

RULE TITLE: Cultural, Historic, Natural and Wildlife Resources

RULE SUMMARY: Rules for use of the ocean shore. Changes eliminate outdated requirements for federally recognized tribal members to obtain a permit for collection of natural products. Changes also update collection rule for plants in marine reserves and marine protected areas.

RULE TEXT:

(1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on the ocean shore state recreation area, unless the department has authorized that activity by a permit issued under ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) Except with the written permission of the department or as allowed by sections (3) or (4) of this rule, a person may not:

(a) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials; or

(c) Place, remove, roll, move any stones, logs or other objects to gain access to the ocean shore state recreation area.

(3) A persons who is an enrolled member of an Indian Tribe as defined in ORS 97.740 may collect natural products as part of their traditional cultural heritage, in accordance with procedures established by the department and in state rules.

Removal for Personal Use:

(4) A person may remove small quantities of natural products from the ocean shore state recreation area for personal use without a permit as provided in subsections (a) and (b). However, the department may restrict removal of natural products to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) Souvenirs that may serve as a reminder of a person's ocean shore visit and may include a small quantity of agates and other rocks, driftwood, and similar non-living items collected for non-commercial, personal use in accordance with ORS 390.705 and 390.725. For items such as agates, sand and cobble, each person collecting must use an individual container and may not combine collections in the same container with another person. Unless otherwise restricted by the department, a person may remove:

(A) Agates and other non-living items such as shells, stones, and fossils loose on the ground, in small quantities, defined as no more than a one-gallon volume container per person per day; up to three gallons per person per calendar year.

(B) Sand: no more than a five-gallon volume container per person per day; up to 20 gallons per person per calendar year.

(C) Cobble: no more than a five-gallon volume container per person per day; up to 10 gallons per person per calendar year.

(D) Driftwood, for non-commercial purposes, as follows:

(i) No more than one cubic yard (3 ft X 3 ft X 3 ft) per person per day; up to three cords per person per calendar year.

(ii) Driftwood removal is restricted to wood that can be loaded by hand only. A person may not use mechanized loading or removal equipment. The department must approve chainsaw use.

(iii) A person may not remove wood embedded in the beach or in dune banks from the ocean shore state recreation area.

(iv) A person may not disturb, cut, mutilate or remove ancient tree stumps, including but not limited to those found on the ocean shore state recreation area at the Neskowin “ghost forest.”

(b) Living or non-living seaweed and marine plant harvesting or collecting for non-commercial, personal consumption is allowed as provided in paragraphs (A) through (H) of this subsection. The department may restrict removal of aquatic vegetation to certain species, areas of the ocean shore state recreation area, quantities, and time of year.

(A) A person may harvest living seaweed and marine plants annually beginning March 1 and ending June 15.

(B) A person may harvest non-living seaweed and marine plants all year. However, in any western snowy plover-managed area, a person may not harvest non-living seaweed and marine plants during seasonal closures beginning March 15 and ending September 15.

(C) A person may not cut or disturb eel grass (*Zostera* spp.), surf grass (*Phyllospadix* spp.) or sea palm (*Postelia* sp.) in any area.

(D) A person may not harvest or collect any species listed on the “Rare, Threatened and Endangered Species of Oregon” published by the Oregon Biodiversity Information Center.

(E) A person may harvest no more than a one-gallon volume container per day; up to three gallons per calendar year.

(F) Each person collecting must use an individual container and may not combine collections in the same container with another person.

(G) A person may harvest only by hand using a knife or similar instrument. A person may only harvest live vegetation by cutting or picking; tearing or using tined instruments, such as rakes or forks, is prohibited. A person may remove loose or drift plants. A person may not remove or disturb a holdfast.

(H) A person may not pick, cut, mutilate, trim, uproot, remove or attempt to take or possess any living or non-living plants or seaweeds in marine reserves and marine protected areas including all areas designated for Rocky Habitat Site Management (Marine Education Areas, Marine Research Areas and Marine Conservation Areas) under Oregon Territorial Sea Plan Part Three unless specifically allowed under management goals for the designated site.

(5) For any area of the ocean shore state recreation area that is also either a marine reserve or marine protected area, regulations pertaining to collection or removal of natural products are provided in division 29, OAR chapter 635, division 12, and OAR chapter 141, division 142.

(6) In order to remove or collect quantities of natural products greater than the limits listed in this rule, a person must obtain a special-use permit from the department.

Removal for Commercial Use:

(7) In order to remove or collect natural products for commercial use, a person must obtain a permit as provided in OAR chapter 736, division 20.

Other Collecting Activities:

(8) Fishing, shellfishing, and collecting of other marine invertebrates for personal or commercial use are regulated by the Oregon Department of Fish and Wildlife (ODFW) under rules in OAR chapter 635.

(9) A person may engage in recreational prospecting as provided in this section. However, the department may restrict disturbance or removal to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) A person may remove sand from the ocean shore state recreation area for personal prospecting use. A person may remove a maximum of one five-gallon volume container per day; for up to 20 gallons per person per calendar year.

(b) Equipment is limited to hand-operated instruments;

(c) A person may not use motorized equipment, including solar, battery operated pumps, or other similar motorized devices;

(d) A person may not use chemicals, heavy metals or other aids to separate metals;

(e) A person may not prospect in waters of the state without written permission from ODFW regarding in-stream work periods. A person may not interrupt or divert water flow or in any way restrict the movement of fish or wildlife;

(f) A person may not disturb, take, or move wildlife, vegetation or other natural resources in the prospecting process;

(g) If a person moves rocks in the prospecting process, the person must return the prospecting area to original condition before leaving the ocean shore state recreation area;

(h) A person may not prospect in any western snowy plover-managed area, during seasonal closures beginning March 15 and ending September 15;

(i) A person may not disturb more than one cubic yard of materials at any individual site, or more than a total of five cubic yards within a one-quarter mile radius; and

(j) A person may not stake or file a mining claim or leasehold location.

(10) Scientific research: A person may only engage in scientific research, including product removal for research, pursuant to a written permit from the department's Salem headquarters and any other required state or federal permits. For example, a person who wishes to capture or handle marine and freshwater fish and shellfish and other marine invertebrates for scientific or educational purposes from the waters of Oregon, including the ocean shore state recreation area, must obtain a valid scientific taking permit from the Oregon Department of Fish and Wildlife, as provided in OAR chapter 635, divisions 7 and 43.

(11) Metal detecting: A person may use a metal detector or similar device on the ocean shore state recreation area without a written permit from the department in the areas noted in the "Detecting Allowed" list, published on the OPRD website.

Additional Rules for Natural Resource Protection:

(12) A person may not place items such as logs, rocks, ropes, structural members or other objects; remove, bury, roll stones or other objects; carve, dig caves or sculpt in sand dunes or sea cliffs, in a way that endangers visitors or damages ocean shore resources.

(13) A person may not do any of the following within the ocean shore recreation area:

(a) Hunt, collect, pursue, trap, kill, injure, harass or molest any wildlife, disturb or damage their habitat, disturb tidal pools, gather eggs or other live material, except as allowed in this rule. However, a person may detain or remove injured wildlife for rehabilitation efforts. A person must release injured or orphaned wildlife to a licensed wildlife rehabilitator as soon as feasible and in accordance with OAR chapter 635, divisions 44 and 56.

(b) Feed, give or offer food to wildlife;

(c) Discharge any firearm, pellet gun, bow and arrow, slingshot, paintball gun, or other weapon or device capable of injuring any person or wildlife, except as allowed by section (14).

(14) The director may authorize the use of firearm and other predator control methods by designated individuals for natural resource management purposes.

Rules for Western Snowy Plover Management Areas:

(15) In the western snowy plover management areas the following additional rules apply, which are adopted based on the department's Habitat Conservation Plan for Western (Coastal) Snowy Plover:

(a) Occupied Sites: In areas the department designated as occupied sites for western snowy plovers, the following apply:

(A) All recreation is restricted within dry sand demarked areas beginning March 15 and ending September 15. The department may declare restrictions ended on July 15 due to a discontinuation of nesting. The boundaries of "dry sand" areas may be identified with symbolic fencing (roping), signs, or both.

(B) A person may not operate a motorized or non-motorized vehicle or flying apparatus, including but not limited to kites, gliders and air balloons on the wet sand adjacent to demarked dry sand areas, except persons the department has approved to perform administrative, enforcement or scientific duties.

(C) Dogs are prohibited on the wet sand adjacent to demarked dry sand areas.

(D) Other recreational activities, such as camping and recreational fires, that could not typically occur on wet sand due to waves are also prohibited.

(E) Walking and any other passive activity not otherwise mentioned here are allowed on the wet sand.

(F) Horseback riding on the wet sand of beaches with occupied sites is allowed, unless horseback riding is otherwise restricted by special rules that pertain to areas adjacent to coastal cities and detailed in division 30.

(b) Unoccupied Sites: In areas the department has designated as unoccupied sites for western snowy plovers:

(A) A handler must leash dogs with a leash length of six feet or less and keep the dog under physical control at all times.

(B) Motorized and non-motorized vehicles are prohibited beginning March 15 and ending September 15. The department may declare the restrictions to end on July 15 due to a lack of nesting. The department may allow a person performing administrative, enforcement or scientific duties to use motorized or non-motorized vehicles when on official duty.

(C) The department will use signs placed at approaches to an unoccupied, actively managed area to convey restricted portions and duration to visitors.

(c) To manage the restoration efforts for the western snowy plover, the department will:

(A) Implement the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(B) Implement specific site plans designed for each area identified in the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(C) Implement the rules in this section, which apply to department-owned, leased or managed properties, as well as areas owned privately or by local governments that have been identified in the conservation plan or the site plans, and areas adjacent to occupied or unoccupied federal land; and

(D) Take any other action deemed necessary to the restoration effort.

STATUTORY/OTHER AUTHORITY: ORS 390.124, 390.660, 390.725

STATUTES/OTHER IMPLEMENTED: ORS 164.775, 358.920, 390.635, 390.660, 390.725

