

Oregon Parks and Recreation Commission

January 29, 2010

Agenda Item: 6b

Action

Topic: Request for Adoption Division 29 - Marine Reserve and Marine Protected Area Rules

Presented by: John Potter

Background:

During the 2009 Session of the Oregon Legislative Assembly, House Bill 3013 was enacted. This act provides, among other things, that:

“...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...”

Pursuant to the requirements of House Bill 3013, on September 17, 2009, OPRD requested and received Commission authorization to initiate rulemaking. Since HB 3013 requires not only OPRD but also the Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) to develop administrative rules, the three agencies coordinated their rulemaking efforts. This was done in several ways:

- OPRD and DSL formed a single Rulemaking Advisory Committee to assist in the development of, and comment on their proposed rules; and
- OPRD, DSL, and ODFW worked to ensure consistency in each set of rules, and held combined public hearings/meetings in Salem (10/20/2009), Port Orford (10/21/2009) and Otter Rock (10/22/2009).

The three hearings had a combination of 85 attendees (Salem: 29, Port Orford: 21, Otter Rock: 35). Input received during the public comment period dealt primarily with concerns regarding limiting souvenir collection of driftwood, fossils and agates from beaches within a marine reserve. Several comments indicated OPRD rules needed to be more comprehensive as well as consistent with the DSL and ODFW rules. Commenters indicated the need to provide clarity on enforcement and civil penalties, and ensure consistency with Indian Tribal gathering rights.

Action Requested: Approval of Division 29, Marine Reserve and Marine Protected Area Rules.

Prior Action by Commission: Authorization to initiate rulemaking on September 17, 2009.

Prepared by: Jeff Farm and Laurel Hillmann

PARKS AND RECREATION DEPARTMENT

Division 29

MARINE RESERVE AND MARINE PROTECTED AREA RULES

736-029-0010

Purpose

(1) 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 prohibitions and allowances on harvest of fish and wildlife resources (OAR chapter 635, division 12). The Department of State Lands (DSL) has adopted rules regarding authorized uses within the marine reserves and marine protected areas.

(2) This division shall go into effect on June 30, 2011 to coincide with the effective date of Oregon Department of Fish and Wildlife (ODFW) prohibitions and allowances.

Stat. Auth.: ORS 390.124 & 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" means the area established by the State Land Board and identified in OAR chapter 141, division 142.

(5) "Marine Protected Area" means the area established by 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 but not limited to marine plants, minerals, shells, rocks, and sand.

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

(8) “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.

(9) “Ocean Shore 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.

(10) “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.

(11) “Souvenirs” include a small quantity of agates, driftwood, and similar non-living items collected for non-commercial personal use.

Stat. Auth.: [ORS 390.124](#) & 390.660

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

Hist.:

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 from the ocean shore except as allowed under section (6);

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

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

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

(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 section (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 activities prohibited under section (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 tribal member of a federally recognized Indian Tribe in Oregon collecting as part of their traditional cultural heritage in accordance with procedures established by the Department and in state rules, including OAR 635-041-0500.

(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 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; and removal of souvenirs; if the Director determines the removal is:

(a) Necessary to assure the protection of natural resources or the safety of, access to, 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 Permit granted by the Department as provided in OAR chapter 736, division 20 within an area designated as a Marine Reserve or Marine Protected Area

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. The Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in addition to the standards provided in OAR chapter 736, division 20, in considering an ocean shore permit modification application, including but not limited to repairs and extensions.

(8) The Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in addition to the standards under OAR chapter 736, division 20, including but not limited to review by other state and federal agencies under OAR 736-020-0003(11), in reviewing any conditional Ocean Shore Permit within or adjacent to a Marine Reserve or Marine Protected Area.

Stat. Auth.: [ORS 390.124](#) & 390.660

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

Hist.:

736-029-0050

Penalties

A violation of OAR 736-029-0040 is as an ocean shore violation subject to fines as provided in OAR 736-021-0050.

Stat. Auth.: [ORS 390.660](#)

Stats. Implemented: [ORS 390.050](#) & [ORS 390.124](#)

Hist.:

PARKS AND RECREATION DEPARTMENT

Division 29

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