



Oregon Coastal Zone Management Association

P.O. Box 1033 • 313 SW 2nd • Suite C • Newport, Oregon 97365 • 541-265-8918/265-6651 • Fax 541-265-5241 • www.oczma.org

***FREQUENTLY ASKED QUESTIONS
ABOUT OCEAN PLANNING IN OREGON***

by Onno Husing, Director, OCZMA

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This Frequently Asked Questions (FAQ) document remains a work in progress. From time-to-time, this FAQ document will be amended to reflect new circumstances and issues.

Why do we need an Ocean Plan?

For the first time in history, a number of *new uses* are being proposed *for Oregon's Ocean*. The most obvious one is *wave energy development*. But, in time, floating wind energy platforms, open ocean aquaculture facilities, and other things might be sited in the ocean off Oregon.

What do these *new uses* of the ocean have in common? They *physically occupy, for decades at a time*, defined pieces of ocean real estate. That's different from *today's uses* of the ocean (like fisheries and navigation), which are, *temporary* non-exclusive uses of the ocean.

This may shock some people. But, under state and federal law, private corporations can be granted *exclusive access* to what are now public places in the ocean. That means, in time, some areas offshore will *no longer be available* for commercial and recreational fishing, boating, and transit.

That's why an *ocean plan* is needed. Through a planning process, new industrial uses of the ocean can be steered to places with *the least impact* on the marine environment *and* our economy and culture. We can also protect important viewsheds on the Oregon Coast and recreational amenities.

How will fishing grounds information be used in the ocean planning process?

Information is being provided by fishermen (recreational and commercial) through a *confidential* one-on-one interview process. It is a volunteer effort. No one is being compelled to participate.

The information is then *combined or aggregated* to prepare *general maps* of recreational and commercial fishing grounds.

Through *a planning process*, this fishing grounds information will be used to decide *where* new "industrial zones" for activities like wave energy should be located.

Maps of fishing grounds constitute one “overlay” of information for the planning process. Information about other important resources—ecological hot spots, shipping/travel lanes, dredge spoil sites, fiber optic cables, scenic resources (viewsheds), recreational assets—is also being collected. Again, the idea is to steer *new* ocean development away from places in the ocean that are ecologically sensitive and already in use.

For people who care about commercial and recreational fisheries, here’s the *good news*. Under Oregon Law (through *Goal 19—Ocean Resources Planning Goal [OAR 660.015.0010(4)]* of Oregon’s Statewide Planning Goals & Guidelines) fishing grounds *must* be preserved for the fisheries. The same mandate exists under federal law (the *2005 Energy Policy Act*).

That’s why general maps of fishing grounds are being prepared—to protect them under the Oregon Territorial Sea Plan (TSP) and federal law. Here’s the timeline. We are striving to assemble this inventory information by *the second half of 2010* to guide Oregon’s planning process. At present, we are in the information gathering stage.

And, under the implementation requirements of Goal 19 (see Page 4), *small-scale community fisheries* are *also protected* (not just larger fleets).

Information is being gathered for both state *and* federal waters. Maps will be shared with federal agencies to inform the planning process for federal waters (beyond three miles). People within the federal agencies (NOAA and the U.S. Department of Interior) are enthused. They understand *without our cooperation* they can’t avoid impacting fisheries and sensitive marine ecosystems.

The ultimate goal is to establish genuine partnerships. We need a local-state-federal process that’s concurrent, fully integrated, and seamless.

Why do we need to provide information about the location of our fishing grounds? If places for wave energy need to be identified, why not just say where we think wave energy facilities ought to be located, and leave it at that?

State and federal laws/regulations require *some level* of general information or *documentation* about fishing grounds be provided. These are *public regulatory processes* about *public resources* subject to non-discretionary legal standards.

Some people suggest we should change those requirements. We believe that’s a bad idea. Here’s why.

First, it would take *time* to amend these statutes and rules. We don’t have the time to do that. Pressure is building to find places in the ocean for renewable energy development. Second, *Goal 19* and the *2005 Energy Policy Act* are outstanding public policies. They protect marine ecosystems, fishermen, and coastal communities. It would be reckless to tinker with them.

So, recreational and commercial fishermen need to provide *some documentation* about the fishing grounds to protect them. We are working with local teams of fishermen to determine just how much information should be released. *It’s a balancing act*. We need to respect proprietary information, but, provide enough information to invoke Goal 19 protections (under the Implementation Guidelines).

For the ocean beyond three miles, the U.S. Department of Interior (DOI) needs this same kind of general information to guide their leasing/planning process. Under the 2005 Energy Policy Act, Congress instructed DOI that they must “*prevent interference*” with existing ocean uses such as fisheries.

We are working with Ecotrust (headquartered in Portland, Oregon) to carry out the mapping work with local groups. Ecotrust has developed an effective methodology to document the location of existing ocean oceans. And, Ecotrust has experience doing this work on the West Coast.

Given the new era we have entered—where multiple *new uses* of the ocean are on the drawing boards—the information must be anchored to a professional/modern database (a geographic information system [GIS]).

If you are a fisherman, we believe, especially later on, you will be grateful maps were made and built into the planning process. Why? The *information will be your ally*. When an ocean plan is developed, through a collaborative *public* process, we can evaluate (and quantify) economic impacts of various development proposals.

We've got a limited period of time to gather this information (2009 and 2010).

Can we still suggest where wave energy development should go?

Absolutely! We should make that a priority. Later in the planning process, *after* generalized maps of the fishing grounds have been prepared and submitted, local fishing groups should recommend places in the ocean that are suited for wave energy development (“wave energy opportunity zones”). After all, people involved in the fisheries understand, better than anyone, which places in the ocean are likely to have the least impacts on the fisheries. So, by staying engaged in the planning process, you can protect your interests.

The conversation has begun with the Oregon Land Conservation and Development Commission (LCDC) to establish a special fishermen’s Blue Ribbon Committee that will work with the Ocean Policy Advisory Council (OPAC) to take on this key task.

Who is in charge of the planning process? Who is going to be making these decisions?

Again, the ultimate decision maker—the entity responsible for approving a plan under Oregon Law—is the Land Conservation and Development Commission (LCDC). Leading up to LCDC, though, there is a robust public process that runs through the Ocean Policy Advisory Council (OPAC) and then through a second group called the Territorial Sea Plan Advisory Committee (TSPAC). There are ample opportunities to be involved in both of these public processes.

The heavy lifting, though, for the planning process is the *preparation of inventories* (overlays of information). That will be the *key driver of the planning process*. Some of this information is being gathered through local ocean resources planning groups. Anyone can, of course, submit information to the State of Oregon (through OPAC or Oregon state agencies) to inform the process. From the start, it has been designed to be a bottoms-up planning process. In time, we will see inventory information come from a variety of different entities. If information submitted to OPAC/TSPAC is deemed objective (subject to peer review and comes from trusted sources), it will have a major impact on the planning process.

This is a unique *fact-intensive* process. Oregon is leading the nation in figuring out how to do this. That means that *we*, people at the local level, have an unprecedented opportunity to shape this process. Again, we are in the information gathering stage. Stay involved throughout 2010 and early 2011. Help us make the process work!

**Implementation Requirements under Goal 19
Oregon Ocean Resources Planning Goal (OAR 660.015.0010[4])**

1. Uses of Ocean Resources

State and federal agencies shall carry out actions that are reasonably likely to affect ocean resources and uses of the Oregon territorial sea in such a manner as to:

- a) maintain and, where appropriate, restore the long-term benefits derived from renewable marine resources;
- b) protect:
 - 1) renewable marine resources—i.e., living marine organisms—from adverse effects of development of non-renewable resources, uses of the ocean floor, or other actions;
 - 2) the biological diversity of marine life and the functional integrity of the marine ecosystem;
 - 3) important marine habitat, including estuarine habitat, which are areas and associated biologic communities that are:
 - a) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; or
 - b) needed to assure the survival of threatened or endangered species; or
 - c) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; or
 - d) essential to the life-history or behaviors of marine organisms; or
 - e) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or
 - f) unique or of limited range within the state; and
 - 4) areas important to fisheries, which are:
 - a) areas of high catch (e.g., high total pounds landed and high value of landed catch); or
 - b) areas where highly valued fish are caught even if in low abundance or by fewer fishers; or
 - c) areas that are important on a seasonal basis; or
 - d) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or
 - e) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.
- c) Agencies, through programs, approvals, and other actions, shall
 - 1) protect and encourage the beneficial uses of ocean resources—such as navigation, food production, recreation, aesthetic enjoyment, and uses of the seafloor—provided that such activities do not adversely affect the resources protected in subsection 1., above; avoid, to the extent possible, adverse effects on or operational conflicts with other ocean uses and activities; and
 - 2) comply with applicable requirements of the Oregon Territorial Sea Plan.

What about fishermen’s log books? Don’t fishermen already provide information? Why can’t logbooks and VMS (satellite data) be used to get that information?

We’ve looked into that. It’s one way to do this. But, many informed people believe it would be hard to assemble fishing grounds maps from fishermen logbooks. Here’s one reason/example why. Trawl fishermen provide information about the beginning point and the end points of “tow tracks”. That’s one dimensional information.

In addition, a fishing ground map has been generated using VMS tracking data. But, ask yourself, is that the best we can do? Does that data set accurately reflect the location of fishing grounds? VMS data captures the transiting of vessels—that’s all. It doesn’t document where people fish.

But, through an *interview process*, fishermen can provide accurate information about where they’ve fished *over the course of their entire careers*. Logbooks can’t get at this kind of information.

So, yes, there have been plenty of discussions about using fishermen logbooks to document fishing grounds (logbooks fishermen are required to keep by fishery managers). And, on the East Coast they are doing that. But, again, here in Oregon, we firmly believe an interview process is going to provide *much more effective, accurate, and timely* information.

Getting the best information possible into the planning process—to protect fishing grounds and the marine environment—is *far too important* to be left to guesswork.

What are the advantages of providing information about our fishing grounds? What do we gain by doing that?

We gain *a lot*.

During the 1980s, the State of Oregon made a policy decision to *protect renewable resources* (the living resources and their habitats) of Oregon’s Territorial Sea (0 to 3 miles) and fisheries that depend on those renewable marine resources.

The State of Oregon did that under *Goal 19* (the Ocean Resources Planning Goal). Goal 19 was written and enacted during the 1980s largely in response to federal efforts to promote offshore oil and gas development off the Pacific Northwest.

In a nutshell, Goal 19 provides that, in state waters, *fisheries have priority* over oil and gas development *and other forms of development*, including renewable energy development proposals. The *protective language in Goal 19* was something people on the Oregon Coast fought for back in the 1980s. Several decades ago, *no one contemplated* wave energy, wind farms or open ocean aquaculture.

To invoke or activate Goal 19’s protections, some general documentation about fishing grounds must provide the State of Oregon (the Land Conservation & Development Commission [LCDC]) information about the location of the grounds—even *general* information. This way, *fishing grounds can be declared “off limits” to other ocean uses*.

What happens if we don't provide information about the general location of our fishing grounds?

The ocean planning process will, no doubt, proceed *without* accurate fishing grounds information.

What are the implications? Fishing grounds *not* identified during the planning process could be awarded (through a leasing process) to wave energy companies seeking to develop alternative energy facilities (wave and wind power) and other uses. If that happens, down the road, fishermen will be forced to contest FERC (Federal Energy Regulatory Commission) wave energy license applications and MMS (Minerals Management Service) leases *after* these processes are underway.

Ask yourself—*is that a good approach?* Should we take that chance? Will coastal people have the time, resources, skills, and *information* to impact that process once it gets rolling?

Here's another consideration. Without this information, future marine reserve designations could be made that substantially impact fishing grounds because the socio-economic impacts of proposed sides are *not* understood.

Over time, fisheries change for lots of reasons (natural cycles & changes in regulations). How does the planning process take that into account?

It's a challenge. A lot of people have asked that question.

Over time, information on fishing grounds will probably need to be updated and plans will need to be modified/updated to reflect those changes.

A growing number of people believe the ocean planning process (at the state and federal level) needs to proceed cautiously using the principles of "*Adaptive Management*".

A leading scientist has written:

"Adaptive Management is a simple concept. It means, we learn, incrementally, by doing. And, accordingly, we will need to make adjustments along the way. Adaptive management is grounded in the admission that humans do not know enough to manage ecosystems. Adaptive management, from this perspective, formulates management policies as experiments that probe the responses of ecosystems as people's behavior in them changes."

After the information gathering stage of the ocean planning process, important conversations will occur about what constitutes a reasonable scale and pace for offshore development.

Again though, during the interview process, fishermen are asked to give information covering experiences over *their entire career*. So, fishermen are asked to identify major fishing grounds they've used in the past but no longer use (for whatever reason; changes in management, changes in the environment, changes in the marketplace).

For now, it makes sense to do the best job we can, and, get good information built into the first stage of Oregon's Territorial Sea Planning (TSP) process. As fisheries and the wave energy industry evolve, we can make adjustments over time.

We heard in California, when fishermen gave information about fishing grounds, it was used against them to identify marine reserves. Is that true? How does the California experience relate to what Oregon is doing?

There are two different perspectives about what did or didn't happen in California during the Marine Life Protection Act (MLPA) process. They are:

- (1) "We gave information, promises were made it would not be used against us, that information was used to hurt us".
- (2) "We provided information, and, thank goodness we did. The fishing grounds information was used to modify marine reserve proposals. The economic impacts would have been devastating without provided this information."

Which perspective is most accurate?

We are gathering more information about the California process. We plan to bring some fishing industry folks (sport and commercial) who lived through that process to Oregon to explain, first hand, what *really* happened in California.

At the end of the day, though, what happened in California probably has *little or no relevance* to what is happening in Oregon. In Oregon, we have an *entirely different* legal/regulatory system. And, thank goodness, Oregon has *very* different politics than California.

If I participate in the fishing grounds mapping project, are there any circumstances where my individual information will be released to the public?

No. The *only way* your individual fishing grounds information will be released is if *you* request that information (in writing). And, Ecotrust will only release your information to *you*. Of course, Ecotrust will *confirm your identity* should you make that request. And, after you are interviewed, Ecotrust will share the information *with you* to ensure its accuracy. So, you get a chance to review what Ecotrust has on file for you and you can alter it.

The people at Ecotrust are professionals. They totally understand the sensitive nature of individual fishermen's information. *Ecotrust's reputation is on the line.* That is a big deal. If Ecotrust releases information that should *not* be released, serious consequences would follow. Ecotrust will take necessary steps to ensure the information is *not* released (on purpose or by accident).

And again, only *aggregated fishing grounds* information will be released to the public.

And, only at a scale needed for spatial planning purposes. Of course, when we do this, we want to take full advantage of Goal 19's protections. Individual information is *not* needed to do that. Individual fisherman's information, again, will be blended together with information from other interviews to make *a generalized map.*

If my individual fishing grounds information is released, through negligence or on purpose without my permission, what happens? What are my options?

You can sue Ecotrust for damages *if* you can prove you are damaged by the release of information.

The form you will sign *before* you are interviewed by Ecotrust (the consent form or Non Disclosure Agreement [NDA]) makes it clear Ecotrust *cannot* release your individual information *without* your consent.

But, again, Ecotrust's reputation is on the line.

Will fishermen provide accurate information? Won't fishermen try to deceive people and provide inaccurate information to "game" the system?

We believe fishermen will provide accurate information.

Experience has shown fishermen will provide accurate information *if they understand why they are providing the information*. That's what we experienced with the pilot project working with the Southern Oregon Ocean Resource Coalition (SOORC). 130 interviews were conducted (75 with commercial fishermen). The aggregate maps that Ecotrust produced were reviewed in executive session by SOORC (commercial and recreational fishermen). The "peer review" of the maps determined the maps are highly accurate.

Here's a quick anecdote. During the SOORC-led pilot project, a commercial fisherman based in Charleston provided inaccurate information to make a political statement. The fisherman, in effect, said, "I fish everywhere off Oregon!" When other fishermen reviewed the aggregate maps they immediately spotted that fisherman's bogus information. What does that tell us? *Peer review* of maps by fishermen works and is very important.

Again, by explaining *why* the information is needed (to identify fishing grounds to protect them from development), people will understand *there are no incentives to providing inaccurate information*. What's the value proposition? Protect the marine environment and your fishing grounds by providing *general information* about their location.

Can people use Oregon's Open-Records law to gain access to confidential fishing grounds mapping information?

No. Individual fishermen's information will be in a lock box at Ecotrust.

That makes it *unavailable* for Oregon's open records law requests. Moreover, the NDA (non disclosure agreement) fishermen sign with Ecotrust before they are interviewed was specifically designed to *shield the information* from open records law requests. So, firewalls have been established to keep individual information confidential. Only aggregate maps will be released for the public ocean planning process. This was a key consideration during the development of the SOORC-led pilot project. We paid *a tremendous amount attention* to this data-security issue.

At the time of this writing, because this is such a sensitive issue, it appears a separate non profit entity (probably a 501(c)(3)) will be established that can provide *yet another firewall* to protect sensitive fishermen's information from disclosure under Oregon's Open Records Law. This measure, *in addition to the other measures* protecting this sensitive information, if it gives people an even greater sense of confidence in the process, is another welcome development.

Can people make a Freedom of Information Act (FOIA) request for this information?

No. The Freedom of Information Act (FOIA) is a federal law and it only applies to records held by federal agencies. Individual fishermen's information is *not* subject to FOIA. The aggregated fishing grounds mapping information that will be provided to federal agencies will only be information (grant products) released by local ocean planning groups (the same information provided to state agencies and OPAC for the TSP amendment process).

Can individuals or institutions/agencies ask permission to see the aggregated fishing grounds information? Who will control the release of that information? What are the protocols?

People or organizations can request more detailed mapping information from the local ocean resources planning groups—like SOORC (Southern Oregon Ocean Resource Coalition), FINE (Fishermen Involved in Natural Energy), FACT (Fisherman Advisory Committee of Tillamook), and NSAT (Depoe Bay Near Shore Action Team); the groups that spearheaded the gathering of the information working with Ecotrust. Those groups are in charge of making those decisions. Clearly, a compelling case will need to be made to these groups to persuade them to release more information than what a local group want to release for spatial planning purposes. And, again, under *no* circumstances, will individual fishing ground information be released. That individual information stays at Ecotrust.

Will the aggregate fishing grounds maps be too revealing?

Again, we are working through this issue. Opinions vary. Some fishermen have looked at the draft aggregate fishing grounds maps produced by SOORC and they don't see any problems releasing those maps. Others look at the same maps and believe they reveal too much information. Again, teams of fishermen are working these issues out. They are the ones with the skill sets to make those calls.

On November 10, 2009, SOORC reviewed a new general map of the fishing grounds developed by Ecotrust. The new map reflected the feedback provided by SOORC and a number of other leaders from local ocean planning groups. SOORC voted, unanimously, to send that map to the Department of Land Conservation & Development (DLCD) for review. SOORC will also be sharing this map with others.

Will some people in the conservation community try to use fishing grounds maps to close fishing grounds?

That's always a possibility. People are free to do most anything.

However, under ***EXECUTIVE ORDER (E.O.) 08-07 (DIRECTING STATE AGENCIES TO PROTECT COASTAL COMMUNITIES IN SITING MARINE RESERVES AND WAVE ENERGY PROJECTS)*** and under ***HB 3013***, the process in Oregon for siting marine reserves in Oregon's Territorial Sea has been settled.

Here's what's going to happen on the marine reserves issue. Two marine reserve pilot projects are in the process of being designated (for Depoe Bay and Port Orford). Four other general conversations for areas off Cape Falcon, Cascade Head, Heceta Head and Cape Arago are underway. In any event, the outcome of these four conversations must conform to the E.O. 08-07. E.O. 08-07 provides that marine reserve designations must be, "large enough to allow scientific evaluation but small enough to avoid significant economic or social impacts."

Fishing grounds maps could be used to inform that process (the maps that are going to eventually going to be released for the planning process). And, the maps can also be used to *prove* some marine reserve proposals have significant social and economic impacts,

What about the smaller ports and smaller fisheries? If you compare the value of the smaller fisheries with the bigger-producing fleets, won't the smaller fisheries lose out?

No. Under Goal 19 ***smaller-scale fisheries, and the ports/communities that rely upon those fisheries, are protected too.*** But, adequate documentation is needed to invoke the protections of Goal 19. The Implementation Guidelines under Goal 19 address that issue directly.



Onno Husing, author of this document, has been Director of OCZMA since 1996. Husing has served on the Ocean Policy Advisory Council (OPAC) since 1996. He also served as a Board Member of the Oregon Wave Energy Trust (OWET) from the Summer of 2007 until the Fall of 2009.

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