

Federal Consistency Determination - Oregon

Introduction

The Coastal Zone Management Act (CZMA) as amended, 16 U.S.C. Sections 1451 to 1465, requires each federal agency activity, within or outside the coastal zone that affects any land or water use or natural resource of the coastal state, to be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of an approved State management program. Each federal agency carrying out such an activity must provide a consistency determination to the relevant State agency at the earliest practicable time, but no later than 90 days before final approval of the action.

The Proposed Action

The proposed General Permit would authorize discharges of seafood processing waste from facilities discharging in Federal Waters off the coasts of Washington and Oregon. The draft General Permit will cover Federal Waters within the U.S. Exclusive Economic Zone (EEZ), between 3 and 200 miles off the Washington and Oregon coast. In the case of emergent offshore rocks and islands, the EPA's jurisdiction begins 3 nm seaward from the offshore rocks and islands. The greatest distance is off the Orford Reef complex (specifically, Fox Island, where Oregon's Territorial Sea boundary is approximately 8 nm from the mainland shoreline). See Figure 1.

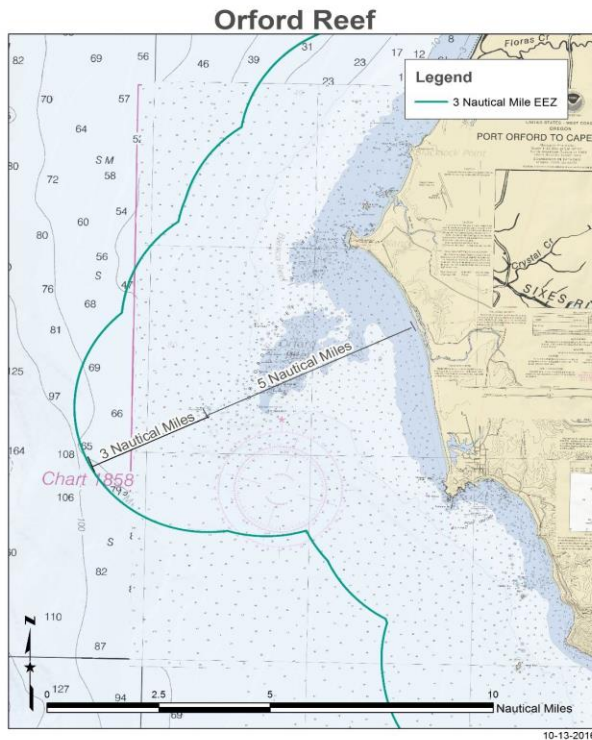


Figure 1. Orford Reef.

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These seafood processing facilities engage in the processing of fresh, frozen, canned, smoked, salted or pickled seafood, the processing of washed or unwashed mince or paste, or the processing of meal and other secondary by-products. Currently, there are 16 known seafood processing facilities (comprised primarily of the Pacific whiting fleet) that discharge effluent into waters of the U.S. that operate in these Federal Waters. This Permit does not authorize the discharge of pollutants from any shore-based facilities, nor any pollutants from vessels transporting material for the purposes of dumping materials into ocean waters.

Proposed permit conditions include the following:

- Permittees must send all solid seafood processing wastes through a properly maintained and operating grinder system designed and operated to grind solids to 0.5 inch or smaller prior to discharge.
- The draft General Permit also includes monitoring/reporting, best management/waste minimization requirements, and provisions to reduce impacts to seabirds.
- Permittees must be moving while discharging, unless doing so would impact the safety of the vessel.
- In order to avoid triggering or exacerbating hypoxic conditions because of additional nutrient inputs from seafood processing waste, the EPA proposes to prohibit the discharge of seafood processing waste in waters shallower than 100 meters in depth during April 15 – October 15, and year-round over the Heceta/Stonewall Banks complex. See Figure 2. For a detailed discussion of the scientific literature regarding hypoxia and ocean acidification off the Oregon coast, please refer to Section I.B.1. of the Fact Sheet for the re-proposed draft General Permit.

The geographic area authorized under the General Permit does not include Blanco Reef or Orford Reef, since these are within State Waters. For a more detailed discussion of rocky reefs, please refer to Section II.B. of the Fact Sheet for the re-proposed draft General Permit.

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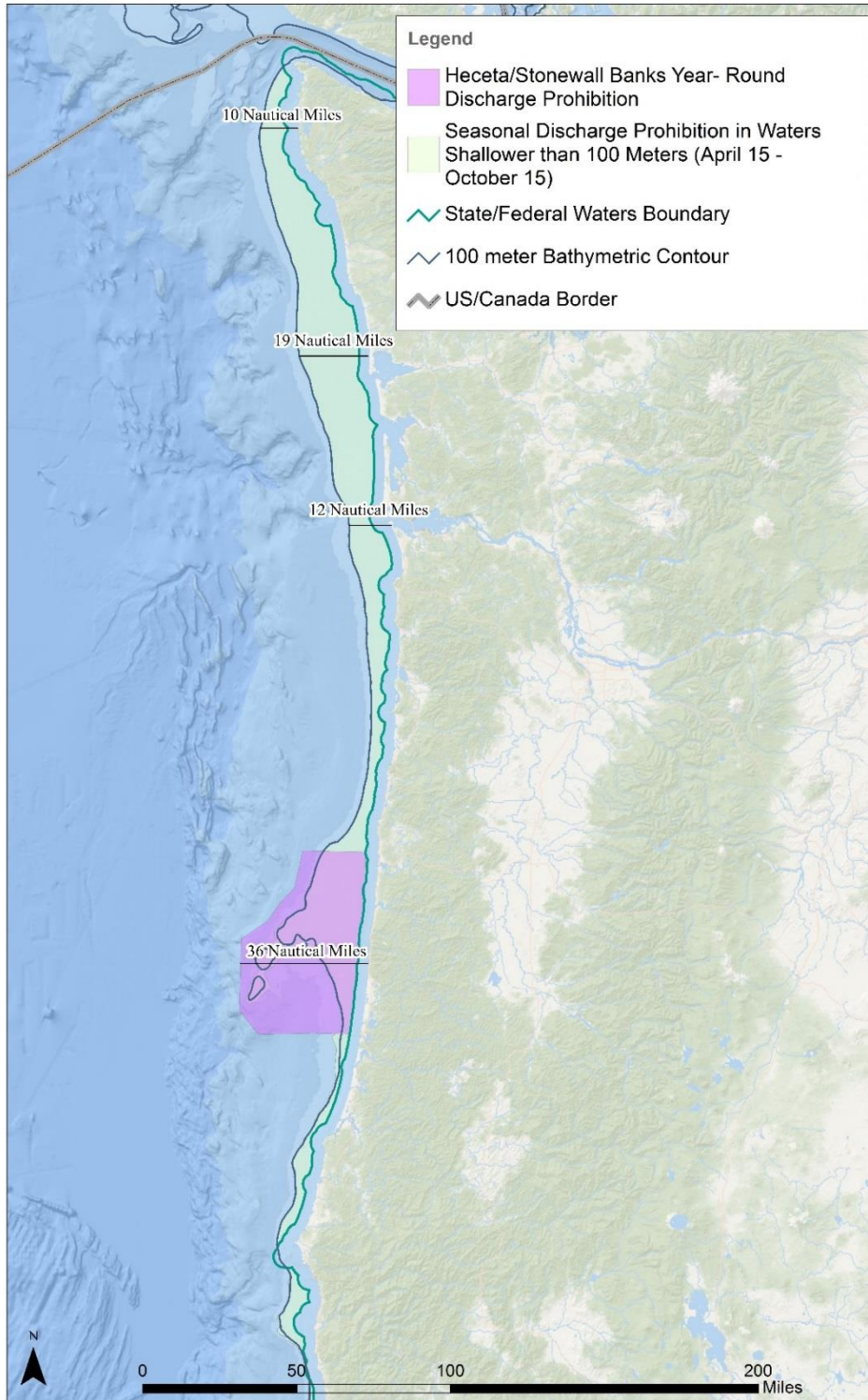


Figure 2. Proposed Discharge Prohibitions.

This NPDES General Permit applies exclusively to Federal Waters; no discharge is permitted within Oregon State Waters. In general, the vessels of the Pacific whiting trawl fleet operate in waters off Washington and Oregon coast during late spring and late fall. The Pacific whiting

fleet generally conducts its processing activity in waters deeper than 100 meters. This is corroborated by materials submitted to the EPA by seafood processing vessels that intend to seek coverage under this General Permit. More detailed information about the Pacific whiting fleet is provided in the Section I. of the revised Fact Sheet.

Consistency Determination

As explained above, this General Permit only applies to Federal Waters in the EEZ, and seafood processing will generally occur even further from the Oregon Territorial Sea (e.g. up to 36 nm from the Oregon coast since discharge will be prohibited over Heceta/Stonewall Banks). However, seafood wastewater discharges covered by this General Permit could potentially affect the Oregon Territorial Sea, depending on wind/current conditions. Therefore, the EPA has reviewed its proposed NPDES General Permit against the Oregon Coastal Management Program (OCMP) policies to determine consistency with the OCMP.

The EPA reviewed its proposed action (i.e., issuance of a NPDES General Permit) to ensure that its action would be consistent to the maximum extent practicable with the enforceable policies of the OCMP. This program and its amendments are approved by the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration (NOAA). The Department of Land Conservation and Development is Oregon's designated coastal zone management agency pursuant to Section 306(c)(5) of the CZMA and Oregon's statutes at ORS Section 196.435.

The enforceable policies of the OCMP include: 1) the statewide planning goals, including Goal 19, Ocean Resources¹; 2) the applicable acknowledged city or county comprehensive plan and land use regulations; and 3) selected state agency authorities (e.g. those governing removal-fill, proprietary leasing, water quality, and fish & wildlife protections); and the State's Territorial Sea Plan².

Because this activity is proposed to take place in the Pacific Ocean, statewide planning goals 1-18 and local comprehensive plans and land use regulations do not apply. Goal 19 (Ocean Resources) and the Territorial Sea Plan are the primary enforceable policies that apply to the consistency determination for this proposed NPDES General Permit. The Territorial Sea Plan sets out the policies necessary to fulfill Oregon's Goal 19, including collecting adequate information on a project to make an informed decision about ocean resources and uses, and assessing the effects of any proposed action on those resources and uses. Enforceable policies contained in Territorial Sea Plan will include a duty to inventory and evaluate marine resources and uses for any action that will occur within Oregon's territorial sea or the Rocky Shores Management area of the Territorial Sea Plan so that the short-term and long-term effects of the proposed action can be understood. Goal 19 and the Territorial Sea Plan require a resource inventory and effects analysis that is sufficient to understand the short and long term effects of the proposed decision on the affected uses and resources.

¹ <https://www.oregon.gov/LCD/docs/goals/goal19.pdf>

² http://www.oregon.gov/LCD/OCMP/Pages/Ocean_TSP.aspx

Federal and State Agency Coordination

Subpart 930.34 of the CZMA Federal Consistency Regulations calls for State and Federal agencies to coordinate prior to providing a consistency determination to the State, and the EPA believes that all relevant agencies have made a good faith effort to this effect. On November 8, 2016, EPA provided a draft consistency determination for the Oregon Department of Land Conservation and Development's review. On December 20, 2016, the Department of Land Conservation and Development submitted comments to the EPA. Coordination has been ongoing throughout this past year, and the EPA appreciates the Department of Land Conservation and Development's assistance and coordination. Over the course of permit development, the EPA has also reached out to (and engaged in dialogue with) the Oregon Department of Fish and Wildlife and to the Oregon Department of Environmental Quality to better understand their perspectives and concerns regarding the draft General Permit.

At the recommendation of the Oregon Department of Fish and Wildlife, the EPA consulted with prominent Oregon-based oceanographers and hypoxia experts at the Oregon State University and NOAA to better understand oceanographic processes around Stonewall Bank, Heceta Bank, and other areas off the Oregon coast. Notably, the re-proposed draft General Permit addresses Oregon's concerns about biochemical oxygen demand (BOD) and seasonal hypoxia, and protects the ecologically important Heceta/Stonewall Banks rocky reef mega-complex. In its December 9, 2016 letter, ODFW recommended a minimum 100 meter depth contour as the seaward boundary for a seasonal discharge "exclusion zone" between April-September. The EPA plans to prohibit discharge in waters shallower than 100 meters during the summer upwelling season (April 15 – October 15). The EPA has also clarified the jurisdiction of this General Permit in order to differentiate Federal Waters from the Oregon Territorial Sea, per ODFW's recommendation in its October 2015 comment letter. In its December 9, 2016 letter, ODFW stated, "we are pleased that many of our concerns are addressed in this preliminary draft re-proposed permit." The EPA has continued to coordinate with the State of Oregon, and has made further changes to the proposed General Permit, in part because of Oregon's comments. ODFW also recommended a minimum vessel speed of 5 knots during discharge, which the EPA has considered (see Section I.B.3 of the Fact Sheet for the re-proposed General Permit for a detailed explanation).

Methodology for Determining Consistency with OCMF

In addition to this consistency determination, the record/basis for the proposed General Permit also includes:

1. Re-proposed draft General Permit
2. Fact Sheet from the first public comment period
3. Fact Sheet for the re-proposed draft General Permit
4. Biological Evaluation (revised May 2017)
5. Ocean Discharge Criteria Evaluation.

For a detailed discussion of the EPA's federal statutory and regulatory requirements for issuing this NPDES General Permit, please see the Fact Sheet from the first public comment period, and the Fact Sheet for the re-proposed draft General Permit. For an analysis of how the proposed permit could affect threatened or endangered species, or Essential Fish Habitat, please refer to

the revised Biological Evaluation. For more detail on effects to ocean resources, please refer to the Ocean Discharge Criteria Evaluation.

Pursuant to the CZMA, as amended, 16 U.S.C. Sections 1451 to 1465, federal activities which affect (directly or are reasonably foreseeable to affect) the coastal zone are to be carried out in a manner that is “consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” To do this, the EPA used Goal 19 and the Territorial Sea Plan Parts One and Two as the main guidance for evaluating our action. Consistency of the proposed General Permit with State ocean-related laws, as listed in the Territorial Sea Plan Part One³, is analyzed in Appendix A.

The EPA's analysis of consistency with Goal 19 and with the Territorial Sea Plan includes information contained in numerous documents we have prepared to meet the requirements of the Clean Water Act (CWA), Endangered Species Act (ESA), Ocean Discharge Criteria Evaluation (ODCE), Magnuson-Stevens Fishery Conservation and Management Act, and National Marine Sanctuaries Act (Section 304(d) of the NMSA (16 U.S.C § 1434(d)).

Goal 19: Ocean Resources

The following section addresses the goals in Goal 19 “Ocean Resources,” as it relates to the indirect effects of the EPA's proposed General Permit.

Goal 19 states, “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 to 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.*

The proposed General Permit would allow the discharge of seafood waste (i.e., renewable marine resources), and does not pertain to non-renewable resources. It allows seafood waste to be discharged at the surface, not at the ocean floor. The permit only applies to Federal Waters, and not to State Waters.

The National Marine Fisheries Service (NMFS) has concurred with the EPA's determination that the proposed General Permit is not likely to adversely affect ESA listed marine species, and the EPA has addressed the NMFS' conservation recommendations regarding impacts to Essential Fish Habitat. The EPA addressed potential adverse effects to living marine organisms, including marine organisms at the ocean floor, in the Ocean Discharge Criteria Evaluation and in the Biological Evaluation.

In order to avoid triggering or encouraging hypoxic conditions because of additional nutrient inputs from seafood processing waste, the EPA proposes to prohibit the discharge of seafood processing waste in waters shallower than 100 meters in depth during April 15 – October 15, which coincides with the summer upwelling season when hypoxia is likely to occur. Excluding

³ http://www.oregon.gov/LCD/OCMP/docs/ocean/otsp_1-d.pdf

discharge in waters shallower than 100 meters during the summer critical period will help to protect other important benthic and near-bottom fisheries that operate off the coasts of Washington and Oregon, such as Dungeness crab, lingcod, and Chinook salmon (Peterson, 2016, personal communication). The Oregon Department of Fish and Wildlife describes the Ocean and Columbia River crab fishery as the “most valuable single species commercial fishery in Oregon” (Oregon Department of Fish and Wildlife, no date). According to NOAA Fisheries, Dungeness crab are primarily fished at depths between approximately 10 and 100 meters off the Washington and Oregon coasts.⁴ Dungeness crabs are not abundant beyond 91 meters in depth.⁵ Most lingcod occupy rocky areas at depths between 10 and 100 meters.⁶ In addition, the EPA proposes to prohibit discharge year-round over the Heceta/Stonewall Banks complex, which is particularly susceptible to hypoxia and anoxia and has experienced Dungeness crab die-offs (Grantham, et al., 2004). The proposed discharge prohibition areas will protect Oregon's renewable resources (i.e., living marine organisms) from negative effects from the discharge.

The discharge allowed by this General Permit would not be expected to impact renewable resources or the biological diversity of marine life or the functional integrity of the marine ecosystem. Vessels will be discharging ground up seafood waste, and will be moving while discharging in order to aid dispersion of the effluent. Little, if any, seafood waste will build up on the ocean floor. Facilities discharging under the Draft Permit should not create piles nor mats of organic waste, and any potential accumulation should be less than 0.2 in (0.5 cm), according to the numerical analysis calculated in the Ocean Discharge Criteria Evaluation (USEPA, 2015). Discharges covered under the Draft Permit are for offshore vessels that are constantly moving and discharging in depths usually greater than 210 ft. Flushing in the action area where discharge will be allowed is high (note that this excludes Heceta and Stonewall Banks), which will disperse seafood processing wastes.

2. *The biological diversity of marine life and the functional integrity of the marine ecosystem.*

See above.

3. *Important marine habitat, including estuarine habitat, which are areas and associated biological 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.*

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http://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/large_whale_entanglement_appendix_a-e.pdf

⁵ <http://www.psmfc.org/crab/2014-2015%20files/DUNGENESS%20CRAB%20REPORT2014.pdf>

⁶ http://wdfw.wa.gov/fishing/bottomfish/identification/greenling/o_elongatus.html

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The General Permit only applies to waters at least 3 miles from the Oregon coast, and does not cover any estuarine habitat. With regard to other important marine habitat, the General Permit's jurisdiction excludes emergent rocks and offshore islands, such as Orford Reef, and therefore protects seabird nesting habitat from impacts of the discharges.

Rocky reefs are important marine habitat that support the biological viability of marine species. Along the West Coast, the Pacific Fishery Management Council identified rocky reefs as Habitat Areas of Particular Concern (HAPC). In addition to a seasonal discharge prohibition during April 15 – October 15 in waters shallower than 100 meters, EPA proposes to prohibit discharge year-round over the ecologically important Heceta/Stonewall Banks rocky reef mega-complex, which already experiences hypoxia and anoxia issues, and is a very important fishing area.

In its October 8, 2015 and December 9, 2016 letters, ODFW requested that EPA prohibit discharge over additional rocky reefs: Nehalem Bank, Garibaldi, Daisy Bank, Hydrate Knoll, Arago Reef, Bandon High Spot, and Rogue Reef. The EPA has conducted separate reviews of the scientific literature for each of the additional rocky reef areas listed above, and has not found evidence in the literature that discharges allowed by the General Permit would cause smothering or other adverse effects to the rocky reefs. See Section 4.3.4 of the revised Biological Evaluation. The EPA is taking comments on whether to prohibit discharge over these additional rocky reefs. See Section II.B. of the re-proposal Fact Sheet.

The EPA has addressed the NMFS' conservation recommendations regarding impacts to Essential Fish Habitat.

As described above, the EPA has also proposed a seasonal discharge prohibition in waters shallower than 100 meters, which will help to protect species that are fished commercially and recreationally that could be affected by seasonal hypoxia at or near the seafloor (e.g., Dungeness crab, lingcod, or Chinook salmon).

b. Needed to assure the survival of threatened or endangered species.

The Endangered Species Act requires federal agencies to consult with the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species and/or their designated critical habitat. The EPA analyzed the discharges proposed to be authorized by the draft General Permit, and their potential to adversely affect any of the threatened or endangered species or their designated critical habitat areas in the vicinity of the discharges in a Biological Evaluation (BE) dated August 2015. The EPA has provided a revised BE with this consistency determination.

On December 18, 2015, the EPA received a letter of concurrence from the NMFS. The NMFS concurred with the EPA that the proposed action is not likely to adversely affect the ESA-listed fish, marine mammals, and turtles under the NMFS' jurisdiction.

On September 29, 2015, the EPA received a response from the USFWS indicating that the draft General Permit has the potential to affect ESA-listed or migratory birds. The EPA has since

worked with subject matter experts, the USFWS, and the NMFS to consider provisions to reduce impacts to seabirds into the General Permit (see Section I.B.6. of the Fact Sheet). The EPA has also clarified that the General Permit's jurisdiction begins 3 nm away from offshore rocks and islands; approximately 8 nm from shore at the furthest point (see Section I.B.4. of the Fact Sheet). Therefore, the discharge of seafood processing waste is prohibited within 3 nm of National Wildlife Refuge islands, and seabird nesting habitat will not be adversely affected by this General Permit. In addition, the EPA is proposing to exclude discharge in waters shallower than 100 meters during April 15 – October 15, and year-round over the Heceta/Stonewall Banks complex. Marbled murrelets are usually found within five miles from shore off of Washington, and just over three miles from the Oregon coast (Huff et al., 2006), and would be unlikely to be adversely affected by this General Permit. Short-tailed albatross often congregate in the Heceta/Stonewall Banks complex, where discharges are prohibited under the General Permit.

In light of the fact that the General Permit prohibits discharges into the Heceta/Stonewall Banks, does not cover coastal rocks and islands because they are located in state waters, and includes additional seabird protection measures (see Section I.B.6. of the re-proposal Fact Sheet), the EPA concludes that the action is not likely to adversely affect listed seabirds. The EPA has updated its BE to reflect these changes to the re-proposed General Permit. The EPA is still in the process of consulting with the USFWS and (concurrent with this public notice period) has resubmitted the revised permit materials and BE for the Service's consideration.

c. Ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity.

The discharge allowed under the proposed General Permit will occur at the surface, and will either be consumed by marine organisms or will dissipate quickly since the vessels will grind up their seafood waste, and will be moving while discharging. In order to avoid any contribution of the discharge to hypoxia at the seafloor, the EPA has proposed a seasonal discharge prohibition in waters shallower than 100 meters, and year-round over the Heceta/Stonewall Banks complex. See Section I.B.1. of the re-proposal Fact Sheet for more detail.

The permitted discharge is not likely to affect ecosystem structure, biological productivity, or biological diversity. For more detail, please refer to the Ocean Discharge Criteria Evaluation.

d. Essential to the life-history or behaviors of marine organisms.

The potential effects of the permitted discharge, both to the marine ecosystem and to ESA-listed species, are described in detail in the Biological Evaluation and in the Ocean Discharge Criteria Evaluation. The proposed General Permit includes a seasonal discharge prohibition to protect marine organisms that live at or near the seafloor from any exacerbation of hypoxic conditions.

e. Especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest.

As stated above, the potential effects of the permitted discharge are described in the Biological Evaluation and in the Ocean Discharge Criteria Evaluation.

f. Unique or of limited range within the state.

The proposed General Permit does not apply to State Waters and complies with the Clean Water Act and the Endangered Species Act. Therefore, it is very unlikely to affect species of unique or limited range within the State. Although outside of Oregon waters, the Heceta/Stonewall Banks rocky reef mega-complex is a unique habitat, which the EPA intends to protect by prohibiting discharge year-round in that area.

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 few 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.*

The EPA has addressed habitat and prey species impacts in its Ocean Discharge Criteria Evaluation and in its Biological Evaluation. The EPA has also worked with the NMFS to address its conservation recommendations regarding Essential Fish Habitat. As discussed above, in order to avoid triggering or encouraging hypoxic conditions because of additional nutrient inputs from seafood processing waste, the EPA proposes to prohibit the discharge of seafood processing waste in waters shallower than 100 meters in depth during April 15 – October 15, which coincides with the summer upwelling season when hypoxia is likely to occur. Excluding discharge in waters shallower than 100 meters during the summer critical period will help to protect other important benthic and near-bottom fisheries that operate off the coasts of Washington and Oregon, such as Dungeness crab, lingcod, and Chinook salmon (Peterson, 2016, personal communication). In addition, the EPA proposes to prohibit discharge year-round over the Heceta/Stonewall Banks complex, which is particularly susceptible to hypoxia and anoxia and has experienced Dungeness crab die-offs (Grantham, et al., 2004). As mentioned in ODFW's October 2015 comment letter to the EPA, Stonewall and Heceta Banks are highly important to Oregon's commercial and recreational fisheries.

Summary

The EPA concludes that the proposed General Permit is consistent with Goal 19 and its foundational document, the Oregon Ocean Resources Management Plan.

Territorial Sea Plan – Part One: Ocean Management Framework

Consistency of the proposed General Permit with State ocean-related laws, as listed in the Territorial Sea Plan Part One⁷, are analyzed in Appendix A. The EPA has provided additional analysis for the following laws:

Oregon Laws

Threatened or Endangered Wildlife Species (ORS 496.172 et seq)

As discussed above, the EPA has prepared a Biological Evaluation to support its consultations with the NMFS and with the U.S. Fish and Wildlife Service (USFWS) regarding this General Permit. The EPA determined that the General Permit is not likely to adversely affect ESA listed marine species, and the NMFS has concurred with that determination. With regard to ESA-listed seabirds, the EPA is engaged in consultation with the USFWS under Section 7 of the Endangered Species Act.

Marine Water Quality (ORS 468)

“Discharge of pollutants into the waters of the state is prohibited. The term "waters of the state" is defined as including "the Pacific Ocean within the territorial limits of the State of Oregon." Numerous other provisions address controlling wastes, requiring certain practices, establishing effluent limitations and conditions, and setting water-quality standards generally.”

The proposed General Permit applies only to Federal Waters, and does not allow for discharges within the waters of the State of Oregon. The General Permit will meet Oregon water quality standards at the State/Federal boundary, and will not impair water quality in State waters. The EPA has written this NPDES General Permit to comply with the federal Clean Water Act, and includes numerous other provisions address controlling wastes, requiring certain practices, establishing effluent limitations and conditions, and setting water-quality standards generally. For more detail about how this General Permit complies with the Clean Water Act, please see the original and the re-proposal Fact Sheets.

In response to Oregon's comments on the preliminary draft General Permit, the EPA has provided an analysis of the relevant water quality parameters (including dissolved oxygen and seasonal hypoxia, as well as other relevant water quality standards/criteria), monitoring and reporting requirements, and the appropriateness of the technology-based treatment standard.

Dissolved Oxygen and Seasonal Hypoxia

In its December 14, 2016 letter to the EPA, the ODEQ expressed concerns about the draft General Permit's potential impacts to dissolved oxygen, and recommended that EPA prohibit further BOD loading. Within Oregon's ocean waters, no measurable reduction in dissolved oxygen concentration may be allowed (OAR 340-041-0016). ODEQ also recommended that Federal ocean waters off the coast of Oregon be considered “impaired” for dissolved oxygen, and that no further BOD load should be allowed because there is no assimilative capacity. However, according to the EPA Region 10's 303(d) listing coordinator for impaired waters,

⁷ http://www.oregon.gov/LCD/OCMP/docs/ocean/otsp_1-d.pdf

Oregon has not submitted any marine water listings for dissolved oxygen. As such, there is no basis to consider Federal Waters off the coast of Oregon impaired for dissolved oxygen.

No discharge will be allowed within Oregon State Waters. The discharges covered by the General Permit will be to the open ocean, in Federal Waters, and at least 3 nm from the Oregon coast or any offshore rocks or emergent islands. With the notable exception of the Heceta/Stonewall Banks complex, where circulation is known to be sluggish and the EPA is already proposing to prohibit discharge, flushing is good and dilution is high. Wave action contributes to high dissolved oxygen at the surface. However, there are certain areas of concern with regard to dissolved oxygen levels, and the EPA is already taking action to protect those areas.

As explained in more detail below, the EPA proposes to prohibit discharge in areas where further BOD loading could trigger hypoxic conditions at the seafloor, particularly in areas where the continental shelf is broad (coinciding with the summer upwelling season), and year-round over the Heceta/Stonewall Banks complex. Impacts to dissolved oxygen and seasonal hypoxia are addressed in the Fact Sheet for the re-proposed General Permit. For ease of reference, the relevant text is provided below:

The process of seasonal hypoxia off the Washington and Oregon coast is well described by Peterson, et al. (2013): "In the northern section of the California Current (NCC), running along the west coast of the U.S.A., seasonal hypoxia events are driven by a combination of relatively low oxygen waters upwelling onto the shelf with further oxygen drawdown stemming from the decomposition of organic matter settling to the seafloor (Chan et al. 2008; Connolly et al. 2010). During the upwelling season (typically mid-April to mid-October), water from 100–150 m depth is transported up onto the shelf and replaces surface waters that move offshore via wind-driven Ekman transport. The upwelled waters are relatively old and tend to be low in oxygen due to extended exposure to water column respiration and isolation from the atmosphere."

According to 15 years of data presented in Peterson, et al. (2013) hypoxia in the Northern California Current is highly seasonal, patchily distributed in both time and space, and can potentially affect over 60% of the continental shelf. Several regions, particularly the wider shelf areas, such as Heceta Bank off Oregon and much of the Washington shelf, are the most prone to early development and persistence of hypoxic bottom waters. Sediment oxygen demand causes the Washington coast to be susceptible to hypoxia and is associated with the broad area of shallow shelf (<60 meters) (Siedlecki, et al., 2015). Low-oxygen conditions result in negative habitat impacts for many organisms (Siedlecki, et al., 2015).

There have been numerous severe hypoxia/anoxia events off the coasts of Oregon and Washington in the last 15 years. For example, in 2002, the Heceta and Stonewall Bank complex experienced unprecedented inner shelf (<70 meter) hypoxia, which resulted in mass die-offs of fish and invertebrates, including Dungeness crab (*Cancer magister*) mortality of >75% in commercial crab pots, compared with the normal 0% (Grantham, et al., 2004). In 2006, the central Oregon coast experienced areas of anoxia, accompanied by the expansion of severe hypoxia across broad sections of the continental shelf. At its peak, hypoxia extended from the

shelf break to the inner shelf (<50 meter) and covered at least 3,000 square km off the coast. Hypoxia occupied up to 80% of the water column in shallow (60 meter) shelf waters and continued over the mid to inner-shelf waters from June to October (Chan, et al., 2008).

Although severe hypoxia is a permanent feature of the oxygen minimum zone that intersects the continental slope (>600 meter in this system), there are no previous records of anoxia over the continental shelf or within the oxygen minimum zone (Chan, et al., 2008). Demersal fish and benthic invertebrate communities in these shallow shelf waters have been acutely affected by seasonally persistent anoxia and severe hypoxia. For instance, in August 2006, submersible based surveys revealed the complete absence of all fish from rocky reefs that normally serve as habitats for diverse rockfish (*Sebastes species*) communities. Chan, et al. (2008) also reported near-complete mortality of macroscopic benthic invertebrates (e.g. Dungeness crabs).

The West Coast is one of the first regions in the world to be impacted by ocean acidification, and multiple factors create a confluence of conditions (including ocean currents, coastal upwelling, and winds) that will make ocean acidification's impacts increasingly severe in the future (Chan, et al., 2016). Since upwelled waters are low in dissolved oxygen, the progression of ocean acidification will be coupled with increasing risk of hypoxic events (Chan, et al., 2016). But, since ocean acidification and hypoxia often co-occur and share a common set of drivers (i.e., increased atmospheric CO₂ and local nutrient and organic carbon inputs), they can be managed synergistically (Chan, et al., 2016).

The West Coast Ocean Acidification and Hypoxia Science Panel recommends better controls on nutrients and organic matter pollution, since they provide nourishment for algae and bacteria that can trigger hypoxia and exacerbate ocean acidification (Chan, et al., 2016). They recommend that managers reduce local pollutant inputs that exacerbate ocean acidification and hypoxia. "While elevated atmospheric CO₂ levels are a major driver of ocean acidification, local discharge of organic carbon and nutrients can exacerbate ocean acidification. Upon discharge, organic carbon is broken down by bacteria, which consume dissolved oxygen during the decomposition process, triggering hypoxic conditions, increasing CO₂ levels and lowering pH" (Chan, et al., 2016). Although the Panel's recommendations are focused on nutrient inputs from land-based sources to semi-enclosed waterbodies, they are still relevant to this permit because: 1) seafood processing waste is high in nutrients and BOD and is a (NPDES "point") source of organic carbon and nutrients in offshore waters; 2) circulation is sluggish over Heceta and Stonewall Banks and other areas where the continental shelf is wide (e.g. Grays Harbor), and 3) seafood waste could become entrained by eddies or retentive waters.

Although high primary production [from nutrient inputs] produces oxygen at the surface, the system is driven toward hypoxia when the particulate organic carbon sinks and respire into water already low in oxygen (Siedlecki, et al., 2015). Seafood processing waste has high biochemical oxygen demand, and could contribute to near-bottom hypoxia off the coast, particularly in wide shelf areas that already experience high sediment oxygen demand. Even if dissolved oxygen has already reached hypoxic levels at the continental shelf break, respiration can further exacerbate hypoxic conditions as bottom water moves shoreward over the shelf, especially if surface organic carbon sources are sizable (Grantham, et al., 2004). Once nutrients

sink to the bottom off the Washington and Oregon coast, they stay on the shelf until circulation patterns are strong enough to flush them away (Siedlecki, et al, 2015).

Oceanographers whom the EPA interviewed while developing this draft permit recommended depth-based discharge exclusion zones in waters shallower than 100 or 200 meters to prevent seafood waste discharges from triggering or exacerbating hypoxic conditions in retentive and/or wide continental shelf areas (Newton and Peterson, 2016, via separate personal communications). Additionally, the NOAA Olympic Coast National Marine Sanctuary recommended that the EPA consider a discharge exclusion zone, possibly by depth contour, as part of its 304(d) consultation with NOAA (see Section III.F. of the re-proposal Fact Sheet for more detail).

The width of the shallow shelf is the critical factor that controls sediment oxygen demand, probably because proximity of the bottom to the surface allows organic matter to reach the bottom, and sediment oxygen demand is directly proportional to the flux of detritus that sinks to the seafloor (Siedlecki, et al., 2015). Observations of sediment oxygen demand in waters shallower than 70 meters are not available, but biomass is more concentrated near the coast, resulting in more large detrital particles. Seafloor oxygen modeling for waters off the Washington and Oregon coasts shows substantial depth dependence, with more sediment oxygen demand in the shallower depths. The larger detritus tends to sink faster, so it reaches the seafloor and respire faster. In addition, more detritus reaches the bed faster, in general, in shallower water columns, since there is less area for respiration to occur in the water column (Siedlecki, et al., 2015).

In order to avoid triggering or encouraging hypoxic conditions because of additional nutrient inputs from seafood processing waste, the EPA proposes to prohibit the discharge of seafood processing waste in waters shallower than 100 meters in depth during April 15 - October 15 (i.e., the summer upwelling season) to avoid exacerbating seasonal hypoxia at the seafloor. See Figure 2. Heceta Bank and the broad Washington shelf region (e.g. offshore of Grays Harbor at 46 N–47 N) are known “hot spots” of organic matter respiration (Siedlecki, et al., 2015). A depth-based discharge exclusion zone will help to protect the wider shelf areas, where both detrital concentrations and sediment oxygen demand are high (Siedlecki, et al., 2015). The wide shelf areas off the Washington and Oregon coasts are already stressed by ocean acidification and hypoxia, both of which are projected to increase as the global climate continues to change.

Excluding discharge in waters shallower than 100 meters will also help to protect other important benthic and near-bottom fisheries that operate off the coasts of Washington and Oregon, such as Dungeness crab, lingcod, and Chinook salmon (Peterson, 2016, personal communication). According to NOAA Fisheries, Dungeness crab are primarily fished at depths between approximately 10 and 100 meters off the Washington and Oregon coasts.⁸ Dungeness crabs are

⁸

http://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/large_wahe_entanglement_appendix_a-e.pdf

not abundant beyond 91 meters in depth.⁹ Most lingcod occupy rocky areas at depths between 10 and 100 meters.¹⁰

Since the EPA is proposing to prohibit discharge in waters shallower than 100 meters during the April 15 – October 15 critical period, the discharge will be miles from the State/Federal Waters boundary during the season when hypoxia is likely to occur. Discharges will be prohibited out to approximately 36 miles from the Oregon coast near the Heceta/Stonewall Banks complex. See Figure 2. Within that *miles-wide* buffer between the discharge and State waters, an enormous amount of mixing and flushing will occur, given the massive dilution provided by the open ocean, tides, currents, wave action, and the vessels moving while discharging. Thus, the discharges covered by this General Permit will have no effect on dissolved oxygen or hypoxia within Oregon waters.

Other Relevant Water Quality Standards/Criteria

The EPA has analyzed the proposed General Permit against Oregon's water quality standards, including beneficial uses and criteria (340-041-001) in order to ensure that the discharges authorized by the General Permit do not negatively affect State waters at the point where Federal and State waters meet. The EPA concluded that the proposed General Permit is consistent with Oregon's water quality standards. Relevant parameters are analyzed below.

Nuisance Phytoplankton Growth

See Section II.A. of the revised Fact Sheet for a discussion of how the EPA considered potential impacts of the discharge to harmful algal blooms.

pH

This General Permit authorizes the discharge of seafood processing waste into the open ocean, and pH is not a pollutant of concern in this General Permit. The discharge authorized by this General permit will have no effect on the pH of Oregon State waters.

Temperature

As described in Section 2.2.1.1 of the revised Biological Evaluation, sea water is used to move fish and waste via flumes to grinders and discharge chutes and secondarily for clean-up and sanitation. By volume, sea water is a primary component of the discharge. Discharge authorized by this General Permit will not impact ocean temperatures, and will cause no change in Oregon State water temperatures.

Toxic Substances

The major constituents of seafood processing wastes are blood, tissue, liquids, meat, viscera, oil and grease, shells, and bones. Except for the bones and shells, which are highly biodegradable, the wastes are primarily organic matter. Major pollutants consist of BOD, solids (sediments and residues), oil and grease, and nutrients. These major pollutants are all considered conventional and of a non-toxic nature, since the end-product is meant for human consumption.

⁹ <http://www.psmfc.org/crab/2014-2015%20files/DUNGENESS%20CRAB%20REPORT2014.pdf>

¹⁰ http://wdfw.wa.gov/fishing/bottomfish/identification/greenling/o_elongatus.html

Turbidity

Due to the nature of the discharge, there could be localized areas of turbidity which would occur in Federal Waters. However, given the enormous dilution provided by the open ocean, the EPA expects any turbidity to dissipate prior to reaching Oregon waters. Offshore waters within the action area have strong currents, assimilation is high, waste materials disperse rapidly, and there is likely to be little impact on water quality. As explained above, during the April 15 – October 15 critical period, discharge will occur miles from the State/Federal boundary, and will dissipate prior to reaching Oregon waters. Discharge will occur much farther from Oregon waters off the coast of Newport, since the EPA proposes to prohibit discharge year-round over the Heceta/Stonewall Banks complex.

Monitoring and Reporting

In both of its letters, the ODFW recommended increased reporting and monitoring requirements. The EPA is proposing to require additional reporting on the quantity and nature of the discharge in order to better understand loading and potential water quality impacts (see Appendix A of the re-proposed General Permit for the revised NOI and Appendix B for the revised Annual Report). Reporting requirements include: a table on which to report daily location of the vessel while discharging, minimum and average daily distances traveled, vessel speed, total stickwater discharged per month, maximum daily discharge amounts, and monthly average by-product recovery rates.

However, the EPA is not proposing to require additional monitoring to assess the discharge's contributions to hypoxic conditions, primarily because of logistical and cost considerations. For the following reasons, it would be unreasonable for the EPA to require near-bottom dissolved oxygen monitoring as part of this General Permit (Peterson, 2016, personal communication):

- Deep-sea monitoring is difficult and expensive, and would likely require the employment of a specialized research vessel;
- Vessels are moving while discharging;
- Seafood processing waste will likely take weeks to mineralize, depending on temperature and other ocean conditions. Therefore, there will be an unknown time lag in the BOD of the discharge; and
- Ocean conditions are dynamic, and seasonal hypoxia is already occurring off the coast due to natural upwellings.

Thus, there are multiple factors that would confound the interpretation of the discharge's contribution to hypoxic conditions.

The EPA considered including a requirement for BOD and TSS monitoring of the effluent, but concluded that such monitoring would be infeasible for offshore seafood processors because of short holding times (e.g. 48 hours for BOD). In other words, it would be difficult for Permittees operating in the open ocean to deliver samples to a laboratory for analysis within the 48-hour window, especially since no discharge is allowed in State waters. See 40 CFR 136—guidelines establishing test procedures for the analysis of pollutants; §136.3 Identification of test procedures; Table II—Required Containers, Preservation Techniques, and Holding Times.

The EPA is taking comments on the monitoring requirements proposed in the General Permit.

Appropriateness of the Technology-Based Treatment Standard

In its December 2016 letter, ODEQ stated that the proposed General Permit would provide an unfair advantage to ocean vessels over shore-based processors, and that vessel Permittees should be held to the equivalent of New Source Performance Standards or at the very least Best Practicable Control Technology for existing sources. ODEQ also asserted that the technology-based standard of grinding seafood processing waste prior to discharge should not be applied to waters off the Oregon coast, in part because “the Remote Alaskan ELGs are for remote areas.”

There are currently no federally promulgated ELGs that apply to offshore seafood processors. As explained in the original Fact Sheet for this General Permit,

EPA has promulgated final ELGs specifying BCT, BPT, and NSPS for specific categories of seafood processing. These ELGs are codified at 40 CFR Part 408. When the ELGs were promulgated, the offshore seafood processing industry either did not exist or was in its infancy. Therefore, offshore processors were not analyzed during the development of the ELGs and, as such, these ELGs do not apply to the offshore seafood processing industry.

In addition, as previously explained, this permit covers discharges into Federal Waters; therefore, State water quality standards, including technology-based performance standards, do not apply to this discharge. Even if they *did* apply to offshore processors discharging to Federal Waters, the situation would not warrant the same effluent limits as shore-based processors because of fundamental differences in how shore-based and offshore facilities operate, including the space and safety constraints inherent to offshore operations. Most offshore processing vessels expected to seek coverage under this General Permit also conduct active trawl operations during discharge- a significant difference from their shore-based counterparts. Offshore processing vessels have limited space available for treatment or storage of waste product, which further limits treatment options.

In addition, the EPA disagrees with ODEQ's assertion that the Federal Waters covered by this General Permit are not remote. Offshore processing vessels are operating in the open ocean at least 3 nm from shore, and face vastly different safety and operational issues than their shore-based counterparts. Since these floating factories are surrounded by ocean, they do not have access to sewer, electricity, road access and other basic utilities and amenities that shore-based factories have. They also have dramatically more dilution available in the open ocean, as opposed to enclosed/shallow bays.

Further, requiring offshore seafood processors to transport Pacific whiting (i.e., the target species) to shore-based processors, would not be reasonable. In fact, it would be particularly problematic for the Pacific whiting trawl fleet, and would cause unnecessary expense and logistical difficulties. During discussion with the EPA, representatives of the Pacific whiting offshore processing fleet have emphasized the importance of offshore (i.e., on-vessel) processing for Pacific whiting because of a naturally occurring parasite that causes fish to become soft soon after it is caught. If whiting is not processed immediately after harvest, the quality of the

marketable product suffers. According to NOAA, "The abnormal muscle texture in Pacific whiting is caused by a myxosporidian- induced proteolysis. The latent potential for proteolytic textural softening in whiting, due to the presence of myxosporidian cysts at variable intensity, appears to be an intrinsic characteristic of the Pacific species.... The muscle parasite that affects whiting similarly is of little public health concern, but since it degrades flesh texture significantly and limits the utilization of the resource, it is a matter of technological concern."¹¹

In addition, there would be significant costs in terms of time, fuel, and greenhouse gas emissions associated with transporting the catch to shore-based processing facilities.

As explained in the Fact Sheet, the appropriate technology-based standard which the EPA has applied in this permit using BPJ is the 0.5 inch grind requirement coupled with utilization of by-product recovery where available. In particular, in determining what constitutes BPJ for the offshore seafood processing industry, as explained in the Fact Sheet, "grinding seafood waste to 0.5 inch has been the technology-based effluent limitation applicable to offshore seafood processing facilities in offshore waters around Alaska for over 30 years. The majority, if not all, of the vessels that would likely apply for coverage under the Draft Permit also operate in Alaskan waters and, thus, have the equipment on board to grind their waste to 0.5 inch. The 0.5 inch limitation was originally used for remote Alaska locations in consideration of the expense and logistical difficulties associated with much of Alaska. The 0.5 inch grind effluent limitation was also the BPJ effluent limit that was established in an individual NPDES permit for a seafood processing vessel that discharges to the Atlantic Ocean. Ground wastes should disperse rapidly in the waters covered by the Permit.

In addition to grinders, most of the vessels known to discharge in the coverage area of the Draft Permit also have the capacity onboard to produce fishmeal and/or fish oil. When these by-product recovery systems are fully utilized, wastes discharged to the receiving waters are reduced. Because grinding is economically and technologically feasible, the BPJ requirements for the draft permit are as follows:

- a. Permittees must send all solid seafood processing wastes through a properly maintained and operating grinder system designed and operated to grind solids to 0.5 inch or smaller prior to discharge. This 0.5 inch effluent requirement does not apply to (1) the calcareous shells of scallops, clams, oysters and abalones, (2) the calcareous shells (i.e., tests) of sea urchins, or (3) incidental catches of prohibited and by-catch species which are neither retained nor processed.

Permittees must fully utilize to the extent practicable all treatment processes available on board their vessel to reduce wastes discharges, including but not limited to fishmeal and fish oil production.

Summary

The EPA concludes that the proposed General Permit is consistent with Oregon's water quality standards (e.g. ORS 468B and OAR 340-041-0016).

¹¹ <http://spo.nmfs.noaa.gov/mfr445/mfr4451.pdf>

*Laws Creating National Wildlife Refuge and Wilderness off Oregon 's
Coast*

- *Executive Order 699 (1907) established Three Arch Rocks Reservation*
- *Executive Order 5702 (1931) protected additional refuge lands at T.A.R.*
- *Executive Order 7035 (1935) established Goat Island Reservation*
- *Executive Order 7957 (1938) created Cape Meares Migratory Bird Refuge*
- *Executive Order 2416 (1940) changed names to Three Arch Rocks N.W.R., Oregon Islands N.W.R., and Cape Meares N.W.R.*
- *Public Land Order 4395 (1968) added islands to Oregon Islands N.W.R.*
- *Public Law 91-504 (1970) "Oregon Islands Wilderness" status for Three Arch Rocks N.W.R. and Oregon Islands N.W.R.*
- *Public Law 95-450 (1978) added islands to Oregon Islands N.W.R. and designated additional "Oregon Islands Wilderness" lands*
- *Public Land Order 6287 (1982) added islands to Oregon Islands N.W.R.; designated some islands "Oregon Islands Wilderness"*

Not applicable, since the General Permit's jurisdiction is solely Federal Waters, and begins 3 nm away from offshore rocks and islands, approximately 8 nm from shore at the furthest point.

Territorial Sea Plan – Part Two

Part Two of the Territorial Sea Plan describes the process for making decisions in the future about the use of Oregon's ocean resources. Prior to making any decision to conduct, approve, or fund any action that will occur within Oregon's territorial sea or the Rocky Shores Management area of the Territorial Sea Plan and that is related to or affects marine resources and uses in Oregon's territorial sea, an agency shall prepare, or cause to be prepared, a resource inventory and effects evaluation as required by this section. The resource inventory and effects evaluation shall be sufficient to understand the short-term and long-term effects of the proposed decision on the affected resources and uses.¹²

The EPA has considered the factors listed in TSP Part Two (Inventory Content), including the magnitude, likelihood of effects, and the significant of potentially affected resources and uses.

1. *Proposed action*
2. *Location and description of affected areas*
3. *Physical and chemical conditions*

The proposed action (including location, materials to be disposed of, etc.) is described in detail in the first Fact Sheet for this General Permit, and in the Fact Sheet that explains the basis for the re-proposed General Permit. Potential for the proposed action to exacerbate seasonal hypoxia at-depth is described in the re-proposed Fact Sheet. Physical and chemical properties of the seafood waste discharge, and potential effects to ESA-listed species are described in the Biological Evaluation. Physical and chemical properties of the seafood waste discharge, and potential effects to the ocean/water quality are described in the Ocean Discharge Criteria Evaluation.

¹² http://www.oregon.gov/LCD/OCMP/docs/ocean/otsp_2-a.pdf

4. Bathymetry

Bathymetry was explicitly considered, based on reviews of the scientific literature and interviews with subject matter experts at Oregon State University, NOAA, and the University of Washington. The EPA proposes to impose a seasonal discharge prohibition in waters shallower than 100 meters. See the dissolved oxygen/hypoxia discussion above for more detail.

5. Geological structure and hazards

The EPA proposes to prohibit discharge over the Heceta/Stonewall Banks rocky reef complex, and is taking comment on whether to prohibit discharge over the other rocky reefs recommended by ODFW. See Section II.B. of the revised Fact Sheet for a discussion of how the EPA considered rocky reefs in this permit action.

6. Biological features

By prohibiting discharge over the Heceta/Stonewall Banks rocky reef mega complex, the EPA is protecting renewable resources (e.g. living marine organisms and their Essential Fish Habitat) of that important and biodiverse nursery area. Please see above, as well as the revised Fact Sheet, the Biological Evaluation, and the Ocean Discharge Criteria Evaluation for more detail on how the EPA considered biological features, including: Essential Fish Habitat, seabird rookeries, rocky reefs, impacts to the benthos, and areas prone to hypoxic conditions.

7. Mineral deposits

Not applicable.

8. Cultural, economic, and social uses

a. Commercial and sport fishing

Issuance of this General Permit will benefit commercial/offshore seafood processors, since there has never been NPDES permit coverage for this sector off the Oregon and Washington coast. This permit should also benefit the Dungeness crab and other benthic fisheries that generally operate in waters shallower than 100 meters in depth and are already experiencing harm from seasonal hypoxia at-depth, since the General Permit proposes to prohibit discharge in shallow waters during the summer critical period (see the Fact Sheet for more detail).

In addition, the proposed General Permit will prohibit discharge over the Heceta/Stonewall Banks complex, which is an important site for Oregon commercial and recreational fishers and provides essential habitat for reef-dependent fish, including egg-rearing, feeding, and shelter.

b. Aquaculture

Not applicable.

c. Scientific research

The ODFW's October 2015 comment letter recommended that the EPA consult with appropriate ocean researchers regarding potential impacts to ocean research stations, and address concerns with exclusion zones, if appropriate. The EPA has interviewed the scientists named in ODFW's letter.

The EPA considered the impact of the permitted seafood discharge to the long-term Newport Hydrographic Line, and to the Ocean Observatories Initiative (OOI) Cabled Array and the OOI Endurance Array, as well as other Northwest Association of Networked Ocean Observing Systems (NANOOS) monitoring stations. See Figure 4. The EPA interviewed Dr. Jack Barth of Oregon State University, who is a lead scientist for the OOI and an expert in the Cabled Array and Endurance Array monitoring stations¹³ to learn more about how processed seafood waste could impact long-term ocean monitoring efforts (Barth, 2016, Personal Communication). Dr. Barth recommended that the EPA exclude discharge within 10 nautical miles of research sites.

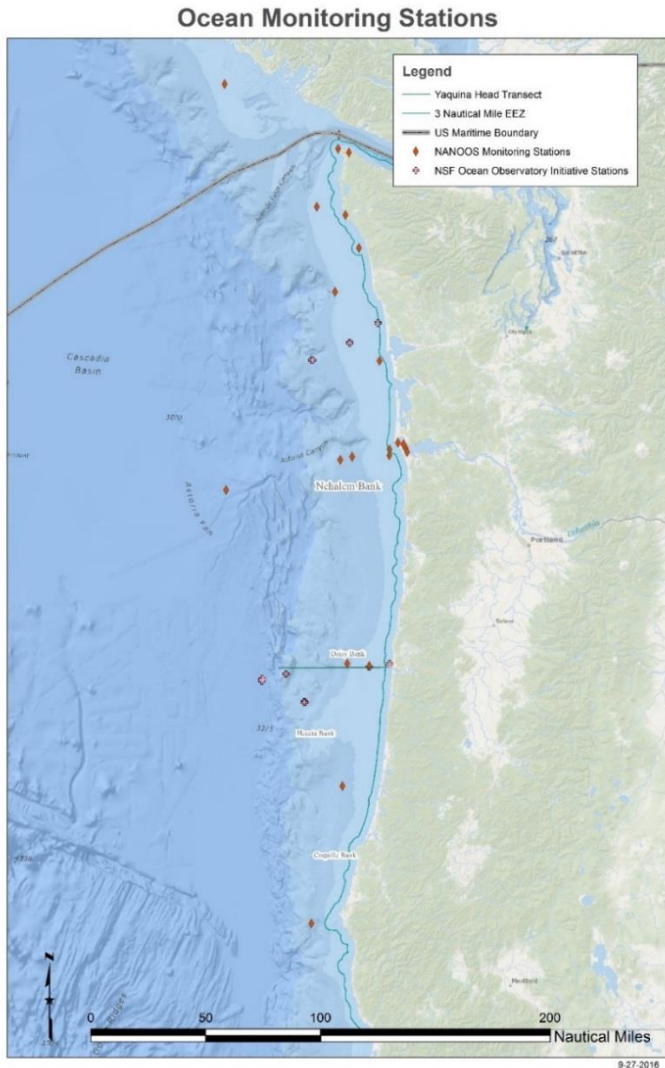


Figure 4. Ocean Monitoring Sites.

¹³ <http://oceanobservatories.org/array/cabled-array/>

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The EPA appreciates the value of these long-term ocean monitoring efforts, but does not have authority under the Clean Water Act to prohibit discharge near ocean monitoring stations.

d. Ports, navigation, and DMD sites

Not applicable.

e. Recreation

Not applicable.

f. Tourism

Not applicable.

g. Mineral extraction

Not applicable.

h. Waste discharge

The EPA has addressed the waste discharge allowed by the proposed NPDES General Permit in the Fact Sheets, the Biological Evaluation, and the Ocean Discharge Criteria Evaluation.

Summary

The EPA concludes that the proposed General Permit is consistent with Oregon's Territorial Sea Plan.

Effects Evaluation

The EPA has evaluated all reasonably foreseeable adverse effects of the proposed NPDES General Permit in detail in the Fact Sheets, the Biological Evaluation, and the Ocean Discharge Criteria Evaluation.

Conclusion

This will be the first issuance of this General Permit, and the first time the offshore seafood processing sector has received NPDES permit coverage off the coast of Oregon and Washington.

After considering these effects, the EPA has determined that the General Permit is consistent to the maximum extent practicable with the enforceable policies of the OCMP. The EPA's consistency determination includes all required components for the content of a consistency determination as set out by 15 C.F.R. Section 930.39.

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USEPA. 2015. Ocean Discharge Criteria Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharges in Federal Waters off the Washington and Oregon Coast. U.S. Environmental Protection Agency. Seattle, WA.

Appendix A - Oregon CZMA Consistency Review

Statewide Programs

Program Component	Enforceable Policies	Description	Consistency Determination
Statewide Planning Goals 1-18			Not relevant, as permit applies only to seafood processing activities in federal (ocean) waters.
Statewide Planning Goal 19: Ocean Resources	<p>Oregon Territorial Sea Plan:</p> <p>Part 2, Sections A, B, and C,</p> <p>Part 3, Sections B.1, C.1, C.2, F.2, and G.1-39</p> <p>Part 4, All sections except 3.a.2</p> <p>Part 5, Appendices A, B and C</p>		<p>Discusses protection of ocean resources for the benefit of commercial fisheries.</p> <p><i>Please see more in-depth analysis.</i></p>
ORS Chapter 92		Subdivisions and Partitions of Land	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 215		County Planning, Zoning, Housing Codes	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 227		County Planning, Zoning, Housing Codes	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 196			<i>Please see more in-depth analysis.</i>

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ORS Chapter 197		Comprehensive Land Use Planning, regulating Establishing a Comprehensive Plan framework relating to Oregon land use.	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapters 273 and 274	273.551 273.553 273.554 273.775 273.780 273.785 274.005 274.025 274.040 274.043 274.060 274.400 274.402 274.425 274.430 274.440 274.525 274.530 274.550 274.560 274.705 274.710 274.715 274.725 274.735	State Lands-Proprietary Approval relating to activities on public and privately-owned lands such as mining, removal of materials such as wood, and railroad development. Kelp Leasing (ORS 274.885 et seq): provides the Division of State Lands with exclusive jurisdiction over the state-owned tidal-submerged lands where kelp grows.	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.

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	274.740 274.745 274.760 274.770 274.790 274.805 274.810 274.820 274.825 274.830 274.835 274.840 274.850 274.855 274.860 274.867 274.885 274.890 274.895 274.905 274.920 274.940		
ORS Chapter 274.005 et seq		Submerged/Submersible Lands are defined as "lands lying below the line of ordinary low water... within the boundaries of the state..."	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 390 Beach Bill	390.010 390.235	Parks and Recreation: Ocean Shores, defined by 390.605 (2) as "the land lying between	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.

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	390.237 390.605 390.610 390.615 390.640 390.650 390.655 390.661 390.663 390.666 390.669 390.678 390.705 390.715 390.725 390.729 390.760 390.770 390.805 390.826 390.835 390.845	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.”	
ORS Chapter 454	454.605 454.607 454.610 454.655 454.657	Sewage and Disposal Systems relating to State Waters	Permit requires sanitary wastewater to be disposed of in accordance with U.S. Coast Guard regulations [33 CFR Part 159] through a certified and operable Type I or Type II Marine Sanitation Device prior to discharge.
ORS Chapter 465	ORS 465.003 to 465.037	Hazardous Waste and Hazardous Materials	Not relevant, as permit applies only to seafood processing

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	465.101 to 465.180 465.200 to 465.455 465.475 to 465.482 465.500 to 465.555 465.900 to 465.992		activities at least 3 miles off the coast.
ORS Chapter 466		Hazardous Waste and Hazardous Materials	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 468A	Entire Chapter	Environmental Quality: Air Quality	Not relevant as the permit applies only to water quality, not air.
ORS Chapter 468B	Entire Chapter Oil Spill Contingency Planning (ORS 468B.300)	Environmental Quality: Water Quality.	<i>Please see more in-depth analysis.</i> Oil spill contingency planning is not relevant to this General Permit.
ORS Chapter 469	ORS 469.300 - 469.570	Regulation of Energy Facilities, including Energy Facility Siting	Not relevant, as permit applies only to seafood processing waste.
ORS Chapter 496 Fish and Wildlife Laws	496.004 496.007 496.009 496.012 496.162 496.171 496.182	Wildlife Administration. The Wildlife policy refers to management of the “lands and waters of this state.” (496.012 (2), 496.012 (4), 496.012 (5))	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 498	498.301 498.306 498.316	Fish Screening, synonymous to “by-pass devices for water diversions.”	Not relevant, as permit applies only to seafood processing waste, and not to fish passage.
ORS Chapter 506	506.006 506.011	Commercial Fishing and Fishery regulations,	Not relevant, as permit applies only to seafood processing

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Commercial Fishing and Developmental Fisheries	506.016 506.025 506.028 506.109 506.220 506.450-465 506.610	applicable within State Waters only (506.036).	activities at least 3 miles off the coast in Federal Waters.
ORS Chapter 509	509.001 509.112 509.115 509.120 509.122 509.125 509.130 509.140 509.505 509.510 509.580 509.585 509.600 509.610 509.625	Additional Fishery Requirements, uses the same 506.036 defining jurisdiction of within State Waters only (509.001).	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast in Federal Waters.
ORS Chapter 517	ORS 517.750 to 517.790	Mining and Mining Clams	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 520	ORS 520.005 to 520.095	Conservation of Gas and Oil	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 527	ORS 527.610 to 527.730	Forest Practices	Not relevant, as permit applies only to seafood processing

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			activities at least 3 miles off the coast.
ORS Chapter 536	536.220 536.700 536.710	Water Resources Administration regulating the administration of state water resources.	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
ORS Chapter 537	537.010 537.110 537.120 537.130 537.135 537.140 537.150 537.160 537.170 537.240 537.332 537.334 537.336 537.341 537.343 537.346 537.348 537.349 537.350 537.352 537.400 537.410 537.420 537.440	Water Appropriation related to state water resources.	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.

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	537.445		
	537.450		
	537.505		
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	537.680		
	537.685		
	537.690		
	537.695		
	537.705		
	537.730		
	537.780		
	537.795		
ORS Chapter 543	543.012	Hydroelectric Projects	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.
	543.014		
	543.015		
	543.017		

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	543.060 543.110 543.120 543.140 543.150 543.210 543.225 543.250 543.255 543.260 543.265 543.270 543.280 543.290 543.300 543.410 543.440 543.610 543.760 543.765		
ORS Chapter 564	564.100 564.115 564.120	Wildflowers and Threatened or Endangered Plants- only applies refers to land (not water/marine) jurisdiction). Example: 564.120 “No person shall take or attempt to take any threatened species or endangered species without first having obtained permission from the person who owns or leases <i>the land</i> upon	Not relevant, as permit applies only to seafood processing activities at least 3 miles off the coast.

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		which the species is growing.”	
ORS Chapter 622	within ORS 622.210 to 622.300	Regulates the shellfish industry (pertains to oysters, clams, mussels, scallops), and applies only to native oysters, clams, and mussels in State Waters (622.220) but not pertaining to ocean shores (622.360).	Not relevant, as permit will primarily cover the offshore Pacific whiting (finfish) sector in Federal Waters.

City and County Comprehensive Plans

Program Component	Enforceable Policies	Description	Consistency Determination
Catsop County Comprehensive Plan and Zoning Ordinance			Not relevant to permit, as specifically states that the Comprehensive Plan “does not regulate commercial or recreational fishing”.
City of Astoria Comprehensive Plan and Development Code			Not relevant to the permit, as Code relates only to estuary activities and permit will be for activities at least 3 miles from coast.
City of Warrenton Comprehensive Plan and Development Code			Not relevant to the permit, as Code relates only to estuary and shoreline activities and permit will be for activities at least 3 miles from coast.
City of Seaside Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to the estuary and shoreline and permit will be for activities at least 3 miles from coast.
City of Cannon Beach Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to the estuary and permit will be for activities at least 3 miles from coast.
City of Gearheart Comprehensive Plan and Zoning Ordinance	Section 3.11: A~2: Aquatic Conservation Zone		Not relevant to the permit, as Ordinance relates only to the estuary, and permit will be for activities at least 3 miles from coast.

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Tillamook County Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Manzanita Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary activities and permit will be for activities at least 3 miles from coast.
City of Nehalem Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary activities and permit will be for activities at least 3 miles from coast.
City of Wheeler Comprehensive Plan and Land Use Ordinance			Not relevant to the permit, as Plan relates only to estuarine and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Rockaway Beach Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to the city's beaches, dunes, and wetlands and permit will be for activities at least 3 miles from coast.
City of Garibaldi Comprehensive Plan and Zoning Code			Not relevant to the permit, as Comprehensive Plan relates only to estuary and coastal areas and permit will be for activities at least 3 miles from coast.
City of Bay City Comprehensive Plan and Development Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Tillamook Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Comprehensive Plan relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.
Lincoln County Comprehensive Plan and Zoning Code			Not relevant to the permit, as relates only to the marine waterway zone

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			activities and permit will be for activities at least 3 miles from coast.
City of Lincoln City Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Depoe Bay Comprehensive Plan and Zoning Ordinance	Ordinance 69		Not relevant to the permit, as Ordinance relates mostly oil and gas ocean activities and permit will be for fish waste discharge. However, under Goal 9, the Ordinance does state a goal to: “encourage continuance of the existing commercial and charter fishing industry.”
City of Siletz Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to marina activities and permit will be for activities at least 3 miles from coast.
City of Newport Comprehensive Plan and Zoning Code			Not relevant to the permit, as Code relates only to estuary, bay, and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Toledo Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast. This Comprehensive Plan does mention maintaining Toledo’s economic strength in the fishing industry. Specifically, it lists under Article 9 on Economic Development the goal to “Maintain Toledo’s economic strength in the wood products, fishing and other

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			resource based industries while diversifying the industrial base within the community” (p. 34 of the 2020 Vision for Toledo, OR).
City of Waldport Comprehensive Plan and Development Code			Not relevant to the permit as Code relates only to estuary and shoreland activities and goals only mention coordinating on-shore planning efforts whereas the permit will be for activities at least 3 miles from coast.
City of Yachats Comprehensive Plan and Zoning Code			Not relevant to the permit as plan outlines only goals related to shoreland, estuary, and beach activities and permit will be for activities at least 3 miles from coast.
Lane County Comprehensive Plan and Zoning Code			Not relevant to the permit as Code only relates to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.
City of Florence Comprehensive Plan and Zoning Code			Not relevant to the permit as Plan states that Goal 19 on Ocean Resources is not relevant to Florence, and permit will be for activities at least 3 miles from coast.
City of Dunes City Comprehensive Plan and Land Use Ordinance			Not relevant to the permit as Ordinance relates only to ocean in terms of Booth Island activities and effects on inland lakes, and permit will be for activities at least 3 miles from coast.
Douglas County Comprehensive Plan and Land Use and Development Ordinance			This ordinance is not relevant to the permit, as the marine commercial section (19F) is only applicable to “urban waters,” not extending to Federal Waters of greater than 3 miles from shore, and marine conservation efforts only relate to coastal environments.
City of Reedsport Comprehensive Plan and Zoning Code			Not relevant to the permit, as Ordinance relates only to estuary and shoreland activities and permit

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			will be for activities at least 3 miles from coast.
Coos County Comprehensive Plan and Zoning and Land Development Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and coastal activities and permit will be for activities at least 3 miles from coast.
City of Lakeside Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as permit will be for activities at least 3 miles from coast and according to Lakeside’s Comprehensive Plan, “the City of Lakeside does not have jurisdiction over ocean resources, and Goal 19 does not apply”.
City of North Bend Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Ordinance relates only to estuary and coastal shoreland activities and permit will be for activities at least 3 miles from coast.
City of Coos Bay Comprehensive Plan and Land Development Ordinance			Not relevant to the permit, as Ordinance relates only to coastal shoreland activities and permit will be for activities at least 3 miles from coast.
City of Coquille Comprehensive Plan and Development Code			Not relevant to the permit, as Ordinance relates only to estuarine and coastal shoreland activities and permit will be for activities at least 3 miles from coast.
City of Bandon Comprehensive Plan and Zoning Ordinance	Title 17: Zoning		Not relevant to the permit, as Ordinance relates only to estuary, dune, beach and other shoreland activities and permit will be for activities at least 3 miles from coast.
City of Myrtle Point Comprehensive Plan and Zoning Ordinance			Not relevant to the permit, as Comprehensive Plan relates only to estuary and shoreland activities and permit will be for activities at least 3 miles from coast.

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City of Powers Comprehensive Plan and Zoning Ordinance			Not applicable, as ordinance does not cover ocean waters further than 3 miles from the coast.
Curry County Comprehensive Plan and Zoning Ordinance			Not applicable, as ordinance does not cover ocean waters further than 3 miles from the coast.
City of Port Orford Comprehensive Plan and Zoning Ordinance			Not applicable to permit, as ordinance does not cover ocean resources.
City of Gold Beach Comprehensive Plan and Zoning Ordinance			Not applicable to permit, as ordinance covers only natural resources within City limits and shoreline resources, and nothing reaching as far as 3 miles from shore.
City of Brookings Comprehensive Plan and Land Development Code			Not applicable to permit, as code only covers a Marine Activity District in the Port of Brookings and Chetco River, none of which is where fishing would take place.

ORS Section 196: Ocean Resources

ORS 196.105-196.165: Columbia River Gorge and Columbia River Gorge Compact	Not relevant to the permit in question due to its confined scope to the Columbia River Gorge and so not reaching Federal Waters 3 miles from the Oregon coast where activities covered under the permit will take place.
ORS 196.175-196.185: Pacific Ocean Resources Compact	Not relevant to the permit for fishing activities as it specifically outlines in section A(2) in Article 1 that the compact should not impact already-regulated industries such as fisheries.
ORS 196.405- 196.485 Oregon Ocean Resources Management Act	
196.405 Definitions for ORS 196.405 to 196.515 Relevant definitions for this section. Important to note: (2) Exclusive Economic Zone: “set forth in Proc. 5030 whereby the United States proclaimed jurisdiction over the	The permit activities would take place inside the Exclusive Economic Zone and not within Oregon’s Territorial Sea.

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<p>resources of the ocean within 200 miles of the coastline.”</p> <p>(5) Territorial Sea: “water and seabed extending three geographical miles seaward from the coastline in conformance with federal law.”</p>	
<p>196.407 Policy</p> <p>Outlines policies of cooperation with California and Washington in terms of developing compatible programs.</p>	Not applicable.
<p>196.408 Duties of state agencies</p> <p>Outlines cross-agency and cross-state and state-federal cooperation for water management.</p>	Not applicable.
<p>196.410 Legislative findings for offshore oil and gas leasing</p> <p>Focused on oil and gas leasing.</p>	Not applicable.
<p>196.415 Legislative findings for ocean resources management</p> <p>Overview of the precedence behind the legislation. Asserts that state has an interest in the ocean management of Federal Waters beyond the allotted 3 miles of state jurisdiction from the coast.</p>	Not applicable.
<p>196.420 Policy</p> <p>Lists Oregon's policy of protecting natural resources generally.</p>	Not applicable.
<p>196.425 Oregon Ocean Resources Management Program</p> <p>Establishes the Oregon Coastal Management Program.</p>	Not applicable.
<p>196.435 Primary agency for certain federal purposes; restrictions</p> <p>The Department of Land Conservation and Development is the designated State Coastal Management Agency but this</p>	

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<p>does not grant this agency with authority to adopt specific regulations regarding ocean resources and uses.</p>	
<p>196.438 Ocean Policy Advisory Council; members; term of office; quorum</p> <p>The Ocean Policy Advisory Council is established by the Governor and includes staff from the State Department of Fish and Wildlife and the Department of Land Conservation and Development.</p>	<p>Not applicable.</p>
<p>196.443 Duties of council</p> <p>These include reviewing the Territorial Sea Plan (within the 3 miles off of the coast), acting as a forum for ocean resource-related discussion but <u>not</u> establishing fishing restrictions.</p>	<p>Not applicable.</p>
<p>196.448 Member compensation; meetings</p>	<p>Not applicable.</p>
<p>196.451 Technical advisory committee; duties; members; vacancies; advisory committees; rules</p> <p>This is a permanent committee chaired by Sea Grant College Program director or similarly qualified council member. This section mostly consists of information on membership of the committee. Also, the council can establish additional advisory committees if it so desires.</p>	<p>Not applicable.</p>
<p>196.453 Project review panels; guidelines</p> <p>The council can establish project review panels for specific development proposals but these panels will not have any authority independent of the review council.</p>	<p>Not applicable.</p>
<p>196.455 Coordination with federal programs</p> <p>The Council can invite federal agencies to assign liaisons to the council who can attend council meetings and respond to council requests for technical and policy information.</p>	<p>Not applicable.</p>

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<p>196.465 Compatibility of acknowledged comprehensive plans</p> <p>To ensure that the Oregon Ocean Resources Management Plan and Territorial Sea Plan are compatible with comprehensive plans of neighboring states and counties</p>	<p>Not applicable.</p>
<p>196.471 Territorial Sea Plan review requirements</p> <p>Outlines the process by which a territorial sea plan can be adopted by the Commission</p>	<p>Not applicable.</p>
<p>196.485 State agency coordination requirements; incorporation of plans</p> <p>How a state agency can go about fulfilling requirements for ocean planning coordination.</p>	<p>Not applicable.</p>
<p>196.540-196.555 Marine Reserves</p>	
<p>196.540 Marine reserves; rules</p> <p>Specifies provisions the State Department of Fish and Wildlife, the State Fish and Wildlife Commission, State Land Board and other relevant state agencies will implement for the purpose of marine reserves at Redfish Rocks, Cape Falcon, Cascade Head, and Cape Perpetua.</p>	<p>This permit only applies to Federal Waters; the permit’s jurisdiction does not cover Oregon State Waters or Oregon marine reserves.</p>
<p>196.542 Limitation on ability of State Fish and Wildlife Commission to adopt prohibitions on fishing by rule</p> <p>Limits the State Fish and Wildlife Commission’s authority to prohibit or limit fishing for the purpose of rule ORS 196.540.</p>	<p>This permit only applies to Federal Waters; the permit’s jurisdiction does not cover Oregon State Waters or Oregon marine reserves.</p>
<p>196.545 Work plan; use of data and recommendations</p> <p>State Department is to develop a work plan for implementing the provisions of 196.540</p>	<p>Not applicable.</p>
<p>196.550 Funding</p> <p>Outlines available routes for funding and steps to take when the State Department of Fish</p>	<p>Not applicable.</p>

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and Wildlife does not have enough resources, including scale-downs or suspensions of fishery prohibitions in the marine reserves.	
196.555 Reporting; rules Calls for periodic reporting on progress made towards work plan goals.	Not applicable.
ORS 196.575	Not applicable.
ORS 196.580 General duties assigned to the Department of Land Conservation and Development as Oregon's liaison in working with other state, local, and federal agencies and organizations.	Not applicable.
ORS 196.583	Not relevant to the permit, as it does not relate to fishing/seafood processing, but pertains to requirements imposed on those authorized to develop energy resources in Oregon's territorial sea.
ORS 196.600-196.665 Establishes a mitigation bank program	Not relevant to the permit, as these options for offsetting environmental degradation only apply to state, and not federal, waters.
ORS 196.668-196.692	Not applicable.
ORS 196.795-196.910 Dredge and Fill regulations	Not applicable.
ORS 196.990	Not applicable.