Oregon Shores
Conservation Coalition

TO: LAND CONSERVATION AND DEVELOPMENT COMMISSION

RE: Part Four of the Oregon Territorial Sea Plan (TSP), Uses of the Sea Floor

Thank you for the opportunity to comment on the proposed amendments to the Oregon Territorial Sea Plan, Part 4, covering uses of the sea floor.

This revision is sorely needed and is a significant improvement over existing regulations. Lack of coordination in dealing with cables and other disturbances of the seabed has been a notable problem, so we are particularly glad to see the creation of the Joint Agency Review Team. We commend both staff and the members of the Working Group for going a lot of good work on this.

While we are pleased to see what is found in the proposed amendments, we do have some concerns about what we consider to be missing.

First and foremost, we are concerned about the lack of clear linkage of sea floor crossings with the inevitable crossing of the shoreline. We realize that the Territorial Sea Plan deals with Goal 19, whereas beaches fall under Goal 18. However, cables and pipelines don't stop at the high tide line; regulating them is disconnected and thus lacks coherence if crossings of the seabed and shoreline aren't considered together. This is implicitly acknowledged at several points: references to OPRD's role; a reference to "potential effects to coastal resources and uses" in section 4.3.4 on "Inventory Content," which seems broader than simply "marine" resources; mention of onshore facilities as "affected areas" in 4.3.4.2. Most notably, in 4.3.4.4, a "geotechnical investigation" of shoreline crossings is called for. But this is purely for physical properties that could affect the cable or pipeline through such results as pipe breakage or surface settlement.

There does not appear to be any required consideration of the biological, recreational, or community benefit aspects of potentially affected shoreline areas. The appropriateness of a pipeline or cable route should surely include the potential impacts to the shoreline it crosses. A route across the sea floor that is deemed appropriate could head up at a place on the shore that is highly inappropriate. The proposed amendments appear to passively hand off this responsibility, stating in 2.5 that shoreline crossings must be approvable through local land use planning. At best, this creates a discontinuity between two types of planning processes, meeting awkwardly at the water line. However, the reality is that few local governments have undertaken a serious review of potential cable or pipeline impacts, let alone incorporated any such analysis in comprehensive plans which are generally decades old. Overstretched local planning departments should not be left on their own to attempt to address cable and pipeline crossings as a conventional land use matter.

Again, we recognize that the Territorial Sea Plan relates to Goal 19, but this plan amendment will not fully succeed in bringing overall coordination to the regulation of sea floor uses unless a way is found to consider the entire route of cables or pipelines as one process. We urge that DLCD staff be tasked with finding a means of integrating Goals 19 and 18, and in some cases Goal 17 as well, in planning and permitting for crossings of the sea floor and shoreline.

To the extent that these policies were intended to include the ocean shore, this must be made much more explicit. A definition of "ocean shore" or "shoreline" in the appendix, along with a clear statement of the policies' scope, would be helpful. The same avoid-minimize-mitigate language concerning adverse impacts to the seabed should also be used in reference to the shore. And any decommissioning plan should include infrastructure on the shoreline as well.

Another area of omission concerns consequences for entities that obtain permits for activities on the sea floor. Perhaps this is handled through some other mechanism that is not reflected in these amendments, but we don't see any provision for bonding; surely the state should protect itself from negligence or malfeasance on the part of those placing infrastructure on the sea floor by requiring them to post a bond. (We take a skeptical view of the idea that compensation for damage could come in the form of "replacing or providing comparable substitute resources or environments." If this method rather than monetary compensation is to be considered, these policies should clarify which agency or agencies would determine what "substitute resources" would be sufficient. The JART?)

We applaud the concept of the Resource and Use Inventory and Effects Evaluation. We understand the logic of having applicants conduct this, which otherwise would place a significant burden on state resources. However, trust but verify, as Ronald Reagan used to say. Information provided by would-be developers must be scrutinized very carefully. Our question is, what happens if an applicant is found—perhaps after the cable or pipeline has been installed—to have been inaccurate or deliberately misleading? These policies don't include any consequences for misrepresentation.

Also under this rubric, the state should receive some compensation when equipment or other material is left on the sea floor. We understand the concession that in some cases removal of the remains of infrastructure after it has failed or reached the end of its useful life may not be feasible, or might do more harm than good. Still, this is a permanent impact to state resources. We would urge that entities responsible for material left on the sea floor be charged a fee—essentially a form of rent payment—for continuing to occupy state land. Such a fee could go toward paying the state's cost of regulating sea floor uses.

One other point concerning the Resource and Use Inventory and Effects Evaluation: 4.3.4.6 appears to cover cultural uses but the list does not include cultural uses – for example, (a) lists commercial and sport fishing but not subsistence fishing or harvest activities. This is important to tie into the later use evaluation at 4.3.5.2 that does explicitly include cultural uses.

On a more technical level, we suggest clarification of mandatory and discretionary provisions. Update Part 1 subsection F on Plan Implementation to correspond with the TSP Part 4 changes

(Section 3). Part 1 subsection F says that all other plan provisions which include Part 4 are recommendations and therefore discretionary. See Part 1 subsection F (1)(b). The updated TSP part 4 states that "these policies and the implementation requirements of the following section are mandatory." TSP at 7. Therefore, Part 1 subsection F should be updated to reflect those changes in the TSP Part 4, where the plan uses "shall" when discussing implementation requirements.

The language of these amendments isn't consistent in referring to Tribal "coordination" or "consultation" (Sections 2.4, 4.2.1). Clarify whether agencies should coordinate or consult with Tribes (two different things) and be consistent in the way these terms are used. It would be a good idea to include a definition of these terms and how they are being used in the appendix. We would encourage consultation with Tribes directly for input on cultural resource considerations. (To be clear, this is entirely our view; we don't presume to speak for the Tribes.)

Again, thank you for considering these comments.

Regards, Phillip Johnson, Conservation Director
Oregon Shores Conservation Coalition
(503) 754-9303