

THE OREGON LEGISLATIVE ASSEMBLY - 2005 REGULAR SESSION

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + }

Senate Bill 734

Sponsored by COMMITTEE ON ENVIRONMENT AND LAND USE

Relating to marine protected areas; creating new provisions; and amending ORS 390.180.

A Bill For An Act

Whereas the creation, site location and size determination of marine reserves must be determined by all the stakeholders in the Oregon territorial sea's marine resources, including the public at large, relevant state agencies, conservationists, local county and city officials and the fishermen and fishing industries and related local businesses of the coastal fishing communities; and

Whereas Oregon's marine biodiversity is a vital asset to the state because Oregon's ocean waters contain recreational, commercial, subsistence, ecological, historical, educational and aesthetic values; and

Whereas the marine environment is subject to damage and loss of ecological integrity due to human activities, including overfishing of some groundfish; and

Whereas local coastal communities are directly affected by the degradation of the marine environment and have an economic interest in preserving and restoring healthy marine populations and critical bottom habitat; and

Whereas state and federal agencies have concluded that marine reserves are a valuable management tool for protecting and recovering the marine environment for the benefit of the marine ecosystems and their components and for the benefit of future generations of Oregonians as a food source; and

Whereas the biology of groundfish is in its early stages, but marine reserves are known to act as nurseries for groundfish, allowing older, more productive fish to survive while producing greater numbers of offspring that may help replenish populations outside the reserves; and

Whereas a significant risk to marine fisheries is our lack of understanding regarding the biology of marine life, and marine reserves can help expand our knowledge of marine life and its ecosystems; and

Whereas sound management of ocean resources requires adequate financial resources and close coordination with the federal government; and

Whereas a limited system of marine reserves, designed and managed according to clear conservation-based goals and guidelines, can provide the state with multiple benefits, now therefore

Be It Enacted by the People of Oregon:

SECTION 1 { + Section 2 of this 2005 Act is added to and made a part of ORS chapter 501. + }

SECTION 2 { + (1) The Oregon Department of Fish and Wildlife shall establish a limited system of marine reserves within waters in the Oregon Territorial Sea, up to the three-mile limit for the following purposes: (A) protecting and restoring specific areas of marine habitat that are of particular benefit or

importance to marine life and for the Oregon economy including subsistence, commercial and sport fishing, including but not limited to valuable groundfish species and their habitat; (B) providing and protecting areas that may serve in the future as the source of baseline data for scientific research, and (C) the restoration and enhancement of marine life, including but not limited to valuable groundfish species and their habitat.

(2) The Fish and Wildlife Commission shall identify and designate specific marine reserves in the Oregon Territorial Sea. The creation, and the determination of their site location and size determination shall be pursued and decided through the following process. (A) The Commission shall organize a Marine Reserves Site and Size Determination Committee (hereinafter Marine Reserves Committee, or, the Committee). The Committee shall have eleven members. It shall be composed of two members of the Oregon Department of Fish and Wildlife, one member of the Oregon Department of Parks and Recreation, one member of the academic and/or scientific community professionally involved with marine biology and/or marine fisheries, one representative of the commercial fishing industry, one representative of the sport fishing industry, one representative of coastal subsistence fishers, one representative of conservation organizations, one representative of a coastal county, one representative of a coastal city, and one public-at-large representative. The Commission shall, in consultation with the Office of the Governor, make the appointments specified herein, and the membership of the Committee shall be seated and be authorized to begin work until the Committee's membership has been approved by both houses of the state legislature. Each legislative chamber shall vote yes or no on the entire roster of Committee members proposed by the Commission, and may not change, add or subtract from the roster as proposed by the Commission. The members of the Committee shall be reimbursed by ODFW for their travel expenses and overnight lodging when reasonably needed.

(3) In making its determination as to the site location and size of Oregon's marine reserves, the Committee shall consider the following factors, to the best extent possible given the present state of knowledge about marine biology and marine ecology, and about the Oregon coastal economy: (A) the importance of any given area or underwater feature as mating, spawning or rearing habitat for groundfish species (including rockfish and bottomfish species), with particular emphasis on commercially valuable species and, amongst those a primary emphasis on those species that are deemed overfished; (B) the larval travel patterns of the larvae of groundfish species (including rockfish and bottomfish species), with particular emphasis on those species that are deemed overfished; (C) the protection of habitat favored, if such be known, by large, old, highly fecund females, (D) the importance of specific other biological elements and/or habitat in the Oregon Territorial Sea's ecosystems, including kelp beds and keystone species, (E) the importance of any proposed area to commercial, sport and charter fishing and subsistence fishing and to the coastal economy.

(4) The Committee shall seek to maximize the ecological benefit of each reserve while also minimizing the economic detriment to the coastal commercial, sport and charter and subsistence fishing industries and communities. In doing so, the Committee shall balance ecological benefits against economic detriment, seeking first, significant ecological benefits that come with no or only slight economic detriment, then moderate ecological benefits that come with only slight detriment, then significant ecological benefits that come with moderate economic detriment, then, only if none of the foregoing can be identified, moderate ecological benefits that come with moderate economic detriment. Only if none of the foregoing can be identified, then the Committee may identify as reserves areas with significant ecological benefit that come with significant economic detriment.

(5) The Committee may not identify more than 15 percent of the total area (measured as square miles or percentages thereof) of the Oregon Territorial Sea as marine reserves, nor less than five percent. Except, however, it may identify up to 20 percent, or down to three percent if the Committee provides to the Legislature a Report that makes the request, identifies with particularity the reasons why, and the Legislature agrees to the variation above 15 percent or below five percent. Such area or areas shall be designated as a Second Tier area or areas. (A) In making such Report, if requesting more than 15 percent, the Committee shall specify: (a) the area that comprises the most important 15 percent, and the

ecological reasons for the area or areas involved, (b) the need for the additional area or areas above 15 percent, (c) the particular biological or ecological value or function of the area within the most important 15 percent, and (d) the particular biological or ecological value or function of the areas above that 15 percent, (e) the economic detriment associated with the 15 percent, (f) the economic detriment associated with the additional area above 15 percent, (g) and the reason why the additional economic detriment from the additional area or areas is very substantially outweighed by the additional ecological benefits. (B) In making such Report, if requesting less than five percent, the Committee shall specify: (a) the economic sectors it deems likely to be negatively impacted by the additional areas above three percent and below five percent if they are set aside as reserves, (b) the need for the avoidance of such economic detriment to such economic sectors, (c) the particular biological or ecological value or function of the area within the three percent to five percent range that would otherwise be protected if the minimum five percent were not lowered to less than five percent, (d) and the reason why the additional ecological benefits from the area that would be set aside if the minimum were not lowered to less than five percent and why they are very substantially outweighed by the additional economic detriments.

(6) If the Committee determines to designate areas totaling within the five percent to 15 percent range, the Committee shall rank those areas according to the factors specified in Section 4 of this Act, and the Commission shall not be required to seek approval from the Legislature for its designations. If the Committee determines to designate areas totaling less than five percent or more than 15 percent (that is, down to three percent or up to 20 percent of the ocean surface), the Commission shall be required to take the areas identified in that second tier of importance, and obtain approval from both Chambers of the Legislature for that variance upwards of 15 percent or downward of five percent.

(7) The Commission shall appoint Reserve Oversight/Monitoring Committees (ROM Committees) for each coastal county in Oregon, based on recommendations it shall solicit from the groups, interests, entities and agencies to be represented on the ROM Committee. Each ROM Committee shall have the same eleven-person membership structure as the Marine Reserves Committee, and shall have responsibility for overseeing the operation and monitoring of the marine reserve or reserves within the Territorial Sea off their portion of the coast. If a reserve is within the Territorial Sea area of two or more counties, each county shall participate in the ROM Committee for that reserve, with the county whose Sea includes the greater part of the reserve holding the county seat on the ROM Committee, and the county whose Sea includes the lesser part holding the city seat. Each ROM Committee with representatives from more than one county may vary duties and responsibilities in proportion to the part of the reserve within their Territorial Sea. If there are several areas in a reserve, linked by similar geological, biological and/or ecological considerations, they should be treated as one reserve for simplicity of management. Each such ROM Committee shall issue an annual report to the Legislature and Governor's Office. It shall describe the reserve, identify any and all research, and any and all fishing industry beliefs or reports, as to the progress, increase or decrease in the ecological functioning and commercial (commercial, sport/charter and subsistence) impacts of the reserve or reserve, and its ecological functioning and progress towards sustainable levels for species deemed overfished.

(8) No member of the Marine Reserves Committee, nor any member of any ROM Committee shall be liable for any otherwise lawful act taken when serving on, or acting for the ROM Committee, nor liable to any person for the consequences of any decision, action or omission by the ROM Committee. Any legal recourse against any action by the Marine Reserves Committee or any ROM Committee shall be against the ODFW, and any liability found shall attach to the Department or the state generally.

(9) No groundfish, bottomfish or rockfish tags, licenses or other device establishing a fee or charge for implementation of this Act shall be created and no such tags or licenses or device shall be issued or charged for. Unless otherwise expressly prohibited by law, the Oregon Department of Motor vehicles shall work with the Department of Fish and Wildlife to create a specialty license plate in support of Oregon Marine Reserves with a design relating directly to a marine and/or marine reserve theme. A contest among High School students should be the preferred method for obtaining such design. + }

Submitted by: Edward Johnston, 1540 N. Nye St., Toledo, OR 97391, (541)-336-1233

Edward Johnston
Signature

5-6-05
Date

Edward Johnston
Print Name

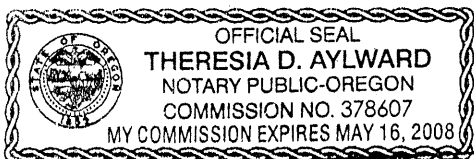
STATE OF OREGON,
County of Lincoln } ss.

On May 6, 2005 before me personally appeared Edward Johnston
DATE

whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.

Theresa D. Aylward
Notary Public for Oregon
My commission expires May 16, 2008



IN THE CONGRESS OF THE UNITED STATES
THE 109th CONGRESS

WHEREAS the closure of sport and charter fishing on the Oregon Coast four days before the Friday beginning of the 2004 Labor Day weekend by the Oregon Department of Fish and Wildlife caused substantial economic losses and dislocation that was severely disproportionate to the ecological benefits it provided to the fish species, the black rockfish, it was intended to protect by avoiding what the Oregon Department of Fish and Wildlife believed was a likely exceeding of the season sport/charter catch quota for the species; and

WHEREAS the Oregon Department of Fish and Wildlife explained the perceived need for the in-season closure as being required by the Magnuson Stevens Fisheries Conservation Act; and

WHEREAS the sport/charter ground fish fishery was closed by ODFW when the catch was at 322 metric tons of black rockfish out of a previously set quote of 342 metric tons; and

WHEREAS the situation was confused by unclear ODFW figures that may have mixed together the catch of black rockfish and blue rockfish; and

WHEREAS virtually all parties, the public and stakeholders, including the Oregon Department of Fish and Wildlife concluded afterwards that the closure was more damaging to the coastal Oregon economy than was beneficial to the black rockfish, NOR THEREFORE, the Magnuson-Stevens Fisheries Conservation Act, Public Law 94-265 as amended, 16 USC 1853, Section 303 is hereby amended as follows:

ADD:

(+ 13. (A) Allow a fishing season in a particular fishery to continue for a period of up to ten days so as to allow it to continue through to the end of any major holiday fishing weekend, despite reasonably concluding or believing, based upon the then-current season data, the computer models utilized, and the most recent stock assessments, that allowing that continuation is likely or certain to exceed the quota for that particular fishery, if the agency reasonably believes (i) that closure of the particular fishery would produce economic losses to the coastal fishing region involved that are significantly and disproportionately greater than the ecological benefits non-delayed closure would bring to the particular fish species and (ii) would bring extraordinary hardships beyond those which would ordinarily occur from the ordinary closing of the fishery at season end. (B) In such event, the regional Council shall, in the season immediately following such continuation, deduct the amount by which the continued season actually exceeded the catch quota set for it from the catch quota for that subsequent season, and shall not follow a policy or procedure of raising that subsequent season catch level for the purpose of compensating for or avoiding the reduction thus required.

(C) The agency allowing such continuance shall make a finding setting forth the reasoning for allowing such continuance, and such finding shall reasonably demonstrate that the harmful economic impacts avoided were reasonably believed to be significantly and disproportionately greater than the ecological benefits foregone. (D) The agency may, in its discretion, declare a closure for some of the days prior to the major holiday fishing weekend as a means of mitigating the ecological harm to the fish species. (E) The regional Fishery Management Councils shall adopt rules enabling state agencies charged with implementation of Council decisions to allow the continuance of a particular fishery under the conditions and rules in this subsection. +)