

YAQUINA BAY EMP

PUBLIC COMMENT LETTERS RECEIVED BY JULY 14, 2023

FINAL REVISIONS OF RESPONSE LETTERS COMPLETED AUGUST 29, 2023

This document contains formal comment letters on the draft Yaquina Bay Estuary Management Plan as well as draft responses from the Project Team. The response letters from the Project Team were later updated based on decisions from the Steering Committee as outlined in the Public Engagement Summary memo that has been published on the Yaquina EMP update website.

Approval has been obtained from the letter author to publish the following comment letters and Project Team responses. Only one letter was not approved by the author for publication - that author has received the Project Team's response letter directly. The sequence of the letters and response is based on order received.

- Elizabeth Ruther of PEW
- Cynthia Strong
- Fran Recht of Pacific States Marine Fisheries Commission
- Phillip Johnson of Oregon Shores Conservation Coalition
- Jena Carter of The Nature Conservancy
- Micah Meskel of Portland Audubon
- Range Bayer of Yaquina Birders and Naturalists
- Kent Doughty of the Audubon Society of Lincoln City



July 14, 2023

Lisa Phipps
Oregon Coastal Program Manager
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

RE: Public comment for draft Yaquina Bay Estuary Management Plan and Estuary Statewide Guidance

Dear Ms. Phipps and Project Leads:

Thank you for the opportunity to comment on the update of the Yaquina Bay Estuary Management Plan (YBEMP). We are also providing recommendations for the forthcoming Statewide Estuary Guidance.

The Pew Charitable Trusts' (Pew) U.S. Conservation program seeks to sustain biodiversity and resilient ecosystems by collaborating with policymakers, communities, businesses, Tribes, and many others. Pew writes to support the update while also offering recommendations on how to ensure that this plan will respond to the climate resilience challenges the Oregon coast faces. We also recognize and applaud the hard work of the Steering Committee, comprised of the Oregon Department of Land Conservation and Development (DLCD), Lincoln County, the City of Newport, the Port of Newport, the City of Toledo, the Port of Toledo, the Confederated Tribes of Siletz Indians, and the project team, including land use consultant Matt Spangler, the Institute for Policy Research and Engagement, and facilitators at Willamette Partnership, to get to this stage.

Background

The Coastal Zone Management Act of 1972 laid the foundation for Oregon's coastal land use planning system. Statewide Planning Goal 16 prescribes the content of Oregon's Estuary Management Plans based on [15 CFR § 923.23](#) prescribing that a state may create additional management plans for "specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval". Although counties and cities use these plans for daily land use decision making, the plans are also frameworks for how the network of coastal partners in the federally-approved Coastal Management Program (Program) will work together to manage a complex, multi-jurisdictional landscape with conflicting resource needs and community uses. It is with this fundamental understanding that Oregon submitted Estuary Management Plans to the National Oceanic and Atmospheric Administration (NOAA) for approval as part of the Program for its 17 major estuaries nearly 50 years ago. In addition to state law, it is also an important part of the legal framework Oregon must work under to maintain its federal approval.

Recommendations

As guided by federal and state regulation, the YBEMP should be a roadmap to sustain community, culture, and the estuary, not only for local jurisdictions, but also for state agencies with authority in the estuary, decision makers, managers, Tribes, and the community at large; all of whom will be critical participants to solve the complex land use challenges we face because of rising seas, temperatures, precipitation, and more. Lincoln County Planning Department's 2014 economic analysis of the county focuses specific attention on commercial fishing, agriculture, timber, and tourism which all rely on the healthy and functioning estuary. Transfer payments and investment income, which comprise *nearly half* of the County's economic activity,¹ undoubtedly rely on the natural resources and scenic beauty Lincoln County's coast and estuary offer.

Conservation is a critical aspect of the state's land use planning approach, particularly for estuary management. Yet we are concerned that the YBEMP is being framed as a land use plan focused predominately on development², running counter to community needs and contrary to state law.³ Accordingly, we urge the Steering Committee and the state to return to a fundamental discussion of the challenges ahead and how estuary management plans can help increase resilience of the community and its resources. To that end, our recommendations start with the opportunity for strategic action to create climate-ready management plans that could be considered for both the draft YBEMP and the forthcoming statewide guidance. We provide additional recommendations for the guidance document that reflect our experience during the update process as members of the Advisory Group to the Steering Committee. Lastly, we provide specific recommendations for the draft YBEMP itself.

Components of Climate Ready Management Plans

As we begin to experience the effects of climate change locally⁴, all governmental land use and resource management plans must consider the impacts of climate change. Local government land use adaptation is a critical piece of the effort to prepare for a changing climate.⁵

Studies are revealing that transformational adaptation, often perceived as one major large-scale intervention, in practice, is a series of interventions and numerous small steps to adjust community culture, governance, and operations to a changing climate and resulting changes in land use and land cover.⁶ Land use planners and land managers need to understand the science of climate change⁷, be able to access natural resource and climate data at local scales, and need new tools and processes for

¹ The Research Group, LLC. 2014. [Ten-Year Update on Lincoln County, Oregon's Economy](#). Prepared for Lincoln County Board of Commissioners. Newport, Oregon.

² Comments by Planning Director, Onno Husing, Recorded Meeting Time 01:26 to 01:30, [Advisory Group Meeting #5](#), April 24, 2023.

³ See Oregon Revised Statute 197.010 (2)(a-b): "(2)(a) The overarching principles guiding the land use program in the State of Oregon are to: (A) Provide a healthy environment; (B) Sustain a prosperous economy; (C) Ensure a desirable quality of life; and (D) Equitably allocate the benefits and burdens of land use planning. (b) Additionally, the land use program should, but is not required to, help communities achieve sustainable development patterns and manage the effects of climate change.

⁴ Department of Land Conservation and Development. 2021. [State Agency Climate Change Adaptation Framework](#).

⁵ Measham, T.G., Preston, B.L., Smith, T.F. *et al.* (2011). [Adapting to climate change through local municipal planning: barriers and challenges](#). *Mitig Adapt Strateg Glob Change* **16**, 889–909.

⁶ Warner, K., Zommers, Z., Wreford, A., Hurlbert, M.A., Viner, D., Scantlan, J., Halsey, K., Halsey, K.D., & Tamang, C. (2019). [Characteristics of Transformational Adaptation in Climate-Land-Society Interactions](#). *Sustainability*.

⁷ Finn, D., E. Evans & K.A. Reed (2022) [An Urban Planner's Guide to Climate Information](#). Lincoln Institute of Land Policy Working Paper

using resource and climate data in planning processes.⁸ Based on Pew’s review of the relevant literature, we offer five components of climate-ready management plans to successfully manage land uses and resources under changing coastal conditions.

1) Climate Scenario Planning

Planning for a range of scenarios is important to prepare for and manage the inherent uncertainty planners and managers face in a changing climate. **Scenario planning** is a systematic tool for considering a variety of possible futures that include many uncertainties, rather than a focus on the accurate prediction of a single outcome.⁹ This tool is increasingly being used by public land management and wildlife agencies in concert with other decision making frameworks to help explain unforeseen trajectories, particularly in light of climate change.¹⁰ Traditional forecast-based planning helps identify outcomes for a specific future and usually assumes the future will resemble the past, which is the type of planning Oregon EMPs have previously undergone.¹¹ **Predictive modelling** can be helpful for both types of planning, however as models have become more sophisticated, their help in charting possible paths forward in an uncertain climate has become even more important. Data inputs for models that predict future conditions typically includes an assessment of species and their role in the ecosystem, weather patterns, and other ecological and environmental factors. Land use planning data inputs might include human population projections, the buildable acreage left after sea level rises, acreage of land that will become estuary, or acreage of land that might become too wet or too salty for some uses well before the area is inundated. Climate scenario planning includes consideration of **suites of actions** that could be taken now to address changing conditions with the aim to decrease vulnerability and increase adaptation and resilience of ecosystems and communities dependent on them. A useful set of scenarios is **plausible** (based on best available science), **relevant** (focused on the management question), **divergent** (characterizes a range of future conditions), and **challenging** (effective for examining established practices and assumptions and fostering creative thinking).^{12,13,14} Scenario planning can be a highly participatory process or a technical service, depending on the context and management need.

2) Climate-related goals and strategies

Establishing goals and strategies is important to understand whether desired outcomes have been achieved and to define a clear path to achieve them. Specific goals, strategies, policy, best practices, and processes that help ecosystems and their associated species resist or adapt to identified climate change impacts (such as flooding, more frequent and severe storms, sea level rise, wildlife, drought and extreme heat) and other key stressors are identified and included. **Climate adaptation strategies** include policy language that helps managers respond to rapidly

⁸ Finn, D. and N. Miller. (2022). [Scenario Planning Using Climate Data: New Tools Merging Science and Practice](#). Lincoln Institute of Land Policy Working Paper.

⁹ Peterson, G., Cumming, G., and Carpenter, S. (2003). [Scenario Planning: A Tool for Conservation in an Uncertain World](#). *Conservation Biology*. 17. 358 - 366.

¹⁰ Rowland, E.R., Cross, M.S., Hartmann, H. (2014) [Considering Multiple Futures: Scenario Planning To Address Uncertainty in Natural Resource Conservation](#). Washington, DC: US Fish and Wildlife Service. Accessed July 9, 2023.

¹¹ Schuurman, G.W. et al. (2022) [Overcoming ‘Analysis Paralysis’ through Better Climate Change Scenario Planning](#).

¹² National Park Service. 2021. [Planning for a Changing Climate: Climate-Smart Planning and Management in the National Park Service](#). National Park Service. Fort Collins, CO

¹³ Rowland, E.R., Cross, M.S., Hartmann, H. (2014) [Considering Multiple Futures: Scenario Planning To Address Uncertainty in Natural Resource Conservation](#). Washington, DC: US Fish and Wildlife Service.

¹⁴ Kahane, A. (2012). [Transformative scenario planning: Working together to change the future](#). San Francisco: Berrett-Koehler Publishers, Inc.

changing conditions (*ie.* if *this* happens then do x, if *that* happens then do y) and can include sunset/sunrise clauses, triggers, and benchmarks among others. They may indicate when **identified thresholds** have been met or exceeded and require action by managers and planners. They may include **community or conservation targets** and a **schedule** for meeting them. Targets that are set may also act as benchmarks or triggers; when achieved, additional pre-determined management or land use actions may take place.

3) Systematic Monitoring

Systematic monitoring is critical for evaluating the effectiveness of land use planning decisions and selected strategies and activities aiming to achieve desired land use and land cover outcomes. Systematic monitoring of important indicators such as annual rainfall and temperature, status and distribution of key species that can serve as indicators of overall ecosystem health, is critical for informing threshold and benchmark-based policy and process. It requires a regular schedule and monitoring methodology for evaluating the effectiveness of management activities and determining what adjustments should be made to improve outcomes.

4) Adaptive Management

Adaptive management helps ensure management is appropriate, effective, and delivers the desired outcomes. Adaptive management is an intentional approach and iterative process to make decisions and adjustments in response to new information and changes in context. It doesn't necessarily change the prescribed goal, although that may be needed depending upon the new information and context. It is essential in situations where management decisions must be made under uncertainty. This approach has been used for many years by scientists and resource managers.¹⁵ It has taken on new importance with the growing pace and scale of climate change impacts.¹⁶ Adaptive management relies heavily on mapping and monitoring data and other information like **scenario planning and systematic monitoring** to adjust or improve the planned activities/strategies/goals within a management plan. It is difficult to implement an adaptive management approach if there is no support, capacity, or schedule for regular monitoring of resources or a commitment to effectiveness monitoring. Regularly revising management plans is a critical aspect of adaptive management and is mandatory to create and maintain community and ecosystem resilience in a changing climate.¹⁷

5) Collaborative Planning and Engagement

Appropriate incorporation of information from people impacted by management is important in designing management policies that meet local needs and are therefore supported. Engagement of local communities, Tribes, and especially vulnerable populations during the development of the plans and implementation of monitoring practices recognizes the needs and desires of people connected to the place. It can be a central part of **scenario planning**, important to **adaptive management** and essential to achieve **goals**, and increases the likelihood

¹⁵ Williams, B.K. 2010. [Adaptive management of natural resources—framework and issues](#). Journal of Environmental Management; 92 (5): 1346-1353.

¹⁶ Tompkins, E. L. and W. N. Adger. 2004. [Does adaptive management of natural resources enhance resilience to climate change?](#) Ecology and Society 9(2): 10.

¹⁷ Miller, B. W., Schuurman, G. W., Symstad, A. J., Runyon, A. N., & Robb, B. C. (2022). [Conservation under uncertainty: Innovations in participatory climate change scenario planning from U.S. national parks](#). Conservation Science and Practice, 4(3), e12633.

of identifying innovative solutions.¹⁸ Research shows that community engagement efforts, collaborative planning processes, and co-management agreements¹⁹ result in increased durability of the conservation outcomes sought by the plan.²⁰ Incorporating Traditional or Indigenous Knowledge and the consideration of cultural resources into these planning efforts yields more comprehensive products²¹ that draw greater community buy-in, holistic valuation of resources, and diverse array of commitments to stewardship of a place and implementation of a management plan.²²

Recommendations for the Statewide Estuary Management Plan Guidance

The update to the YBEMP was undertaken as a pilot process to inform a statewide guidance document that will help other local governments undertake the same effort using an approach that can be scaled depending on staff capacity and available funding. The new statewide guidance document is a critical tool for guiding updates of Oregon's seventeen major estuary plans particularly because the plans are forty years old. Overall, consistency between local jurisdiction efforts is greatly needed and highlights the importance of the state's guidance document. For example, Clatsop County just issued an RFP²³ to undertake the same work that will adhere to state regulation more closely than this update process.

In addition to considering a framework for multi-jurisdictional management plans to adequately address climate challenges described above, Pew offers the following recommendations for the statewide guidance document stemming from our participation in the update process.

Recommendation 1: Set a strong legal framework in the Guidance and clearly outline 'the possible' within current state and local authorities. Clearly outline the relevant federal regulations and the critical role multiple state agencies play in providing information for the framework of the EMPs that ultimately help land use planners implement this complex multi-jurisdictional area. Clarify the requirements of Goal 16 so local jurisdictions and the public have alignment on what is required and what local jurisdictions might take on voluntarily. For example, Goal 16 establishes a *minimum* classification of management units be established in a given estuary (natural, conservation, development); importantly it does not prohibit local jurisdictions from creating additional types of management units to address new resource or use goals or threats, like climate change impacts. Additionally, provide policy guidance that tiers to state policy (and plans) to draw clear relationship between local and state government as part of the Coastal Management Program beyond the relationship specifically between DLCD and local jurisdictions.

¹⁸ Adams D. and Hess M. (2001) Community in Public Policy: Fad or Foundation? Australian Journal of Public Administration 60(2): 13-23

¹⁹ Borrini-Feyerabend, G., Farvar, M. T., Nguingiri, J. C. & Ndongang, V. A. (2007) [Comanagement of Natural Resources: Organising, Negotiating and Learning-by-Doing](#). GTZ and IUCN, Kasperek Verlag, Heidelberg (Germany).

²⁰ Oteros-Rozas, E., Martín-López, B., Daw, T. M., Bohensky, E. L., Butler, J. R. A., Hill, R., Martin-Ortega, J., Quinlan, A., Ravera, F., Ruiz-Mallén, I., Thyresson, M., Mistry, J., Palomo, I., Peterson, G. D., Plieninger, T., Waylen, K. A., Beach, D. M., Bohnet, I. C., Hamann, M., ... Vilarly, S. P. (2015). [Participatory scenario planning in place-based social-ecological research: insights and experiences from 23 case studies](#). *Ecology and Society*, 20(4).

²¹ Berkes, F., Colding, J., & Folke, C. (2000). Rediscovery of Traditional Ecological Knowledge as Adaptive Management. *Ecological Applications*, 10(5), 1251–1262. <https://doi.org/10.2307/2641280>

²² Jantarasami, L.C., R. Novak, R. Delgado, E. Marino, S. McNeeley, C. Narducci, J. Raymond-Yakoubian, L. Singletary, and K. Powys Whyte, 2018: [Tribes and Indigenous Peoples](#). In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 572–603. doi: 10.7930/NCA4.2018.CH15

²³ <https://www.clatsopcounty.gov/commdev/bids-rfp/requests-proposals-update-comprehensive-plan-goals-16-17>

Recommendation 2: Provide clarification in the Guidance on how to update EMPs considering both Goal 16 (estuaries) and Goal 17 (shorelands) per state regulation. Statewide Planning Goal 17 outlines planning and management requirements for the lands bordering estuaries (as well lands bordering the ocean shore and coastal lakes). In general, the requirements of Goal 17 apply in combination with other planning goals to direct the appropriate use of shoreland areas.²⁴ Provisions in Goal 17 specifically focus on the protection and management of resources unique to shoreland areas; examples of such resources include areas of significant shoreland habitat, lands especially suited for water dependent uses, lands providing public access to coastal waters, and potential restoration or mitigation sites.²⁵ Additionally, Goal 16 states “When classifying estuarine areas into management units, the following shall be considered in addition to the inventories: 1. Adjacent upland characteristics and existing land uses; 2. Compatibility with adjacent uses; 3. Energy costs and benefits; and 4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.” To Pew’s knowledge, these specific questions were not answered during the YBEMP update and clarification should appear in the state’s guidance document.

Recommendation 3: Provide a list of new and emerging uses and recommendations for prioritization in the Guidance. The YBEMP update did not discuss new or emerging uses of the estuary. The guidance document should offer a list of new and emerging uses that local jurisdictions should consider during updates and recommend a list of legacy uses that should be deleted. Examples of potential emerging uses include seaweed farming, fiber optic cables, native oyster restoration, and renewable energy support infrastructure. Legacy uses that could be deleted include oil and gas extraction and gravel mining. Goal 16 already prescribes a *minimum* scale for prioritization,²⁶ The guidance document could offer additional prioritization based on whether that use exacerbates or increases resilience of the estuary in a changing climate.

Recommendation 4: Describe the State’s technical assistance role and list known coastwide project needs the Coastal Program plans on supporting as part of the Guidance. DLCD and the Oregon Coastal Management Program’s largest role in the land use planning system is as technical advisors and project leads. In this way, listing analyses and projects that are needed to update EMPs successfully in the statewide guidance document that partner state agencies can implement, will define the state’s role, explore the potential for the state’s role, and acknowledge that there are many needs that exceed a single County’s jurisdiction or interest. Creating this list as part of the document will also let local governments know what they do not need to take on themselves, and therefore, what they should focus their resources on. Some examples include:

- Technical assistance in partnership with the Oregon Department of Fish and Wildlife (ODFW) to update the resource inventory classification scheme ODFW completed for the creation of the original plans remains a major need for all estuaries. The categories of resources, as well as classifying them as significant, minor, and major remains helpful for this update effort.

²⁴ [OAR 660-015-0010\(2\)](#): Guidelines for Goal 17

²⁵ Ibid.

²⁶ “1) Uses which maintain the integrity of the estuarine ecosystem; 2) Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification; 3) Water-related uses which do not degrade or reduce the natural estuarine resources and values; 4) Nondependent, non-related uses which do not alter, reduce or degrade estuarine resources and values.”

- Technical assistance in partnership with Department of State Lands to digitize state and private land ownership for tidal and subtidal lands in an estuary as well as digitizing legacy impacts/uses in order to help Tribal Nations determine where cultural artifacts have been buried or relocated to inform an updated resource inventory.
- Compiling decades of estuarine research into a technical document to ground the process in the best available science as well as creating a legal analysis of the current regulatory landscape in estuaries, including state and federal regulations, to align local land use decisions with the reality of the regulatory landscape. This information should inform local land use planning approaches and policies to a much greater degree they were in this update.

Recommendation 5: Create a state-hosted coastwide public-facing spatial data viewer accompanying the guidance that contains County resource inventories and additional curated data that is regularly updated. Spatial data, as we know it today, did not exist 40 years ago and should be leveraged to a greater extent than currently considered in this plan update. Spatial data analysis of large data sets can reveal problems and illuminate solutions planners and managers do not have the ability to see without aid of GIS tools. Climate and natural resource data continue to be refined to finer scales that are useful at the local level, however Oregon’s coastal counties and cities do not necessarily have GIS specialists on staff. Since the jurisdictions have the same data needs, DLCD should act as the clearinghouse and curator of estuary inventory maps and additional spatial data that would be helpful for planners, as well as network agency partners, to review to inform their daily government tasks.

Recommendation 6: Develop a plan to implement Goal 1 prior to starting an estuary plan update. Planning processes should be appropriately designed to enable participation of stakeholders and Tribal Nations. Longer timelines and working with small groups after larger group discussions can foster scenario planning discussions and new solutions.

Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process."²⁷ It requires each city and county to have a citizen involvement program²⁸ that addresses:

1. Opportunities for widespread public involvement
2. Effective two-way communication with the public
3. The ability for the public to be involved in all phases of the planning process
4. Making technical information easy to understand
5. Feedback mechanisms for policymakers to respond to public input, and
6. Adequate financial support for public involvement efforts

The goal also calls for local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.²⁹ Recommendations are included on DLCD’s [statewide Citizen Involvement Advisory Committee](#) page. Advisory group dialogue essentially took place over 6 months and without tools, maps, and data to support discussions, which did not leverage community input, knowledge, or expertise or provide time for feedback or iterative process.

²⁷ [OAR 660-015-0000 \(1\)](#): Goal 1 Citizen Involvement.

²⁸ Department of Land Conservation Development [website](#). Accessed July 10, 2023.

²⁹ Ibid.

Recommendation 7: Prior to starting an update of an estuary management plan, coalesce existing foundational spatial data and a synthesis of non-spatial research that will inform estuary policies, management unit classifications, unit descriptions, resource capabilities for each unit, and special policies per unit. Land use planners are not natural resource or cultural resource specialists, however the requirements of Goal 16 draw upon natural resource and cultural resource data and information to make policies, designate management units, and describe resources and management objectives “to maintain the integrity of the estuary.” Prior to starting any update effort, coalescing and synthesizing technical information that can be used by planners and the interested public is critical in order to support areas of non-expertise.

Recommendations for the Yaquina Bay Estuary Management Plan (YBEMP)

Specific comments for the draft YBEMP are below. Pew acknowledges the task at hand is significant and a holistic update to the YBEMP may need to occur in phases.

Recommendation 1: Incorporate more components of climate-ready management plans. Estuaries offer services that are opportunities to adapt to a changing climate, mitigate impacts, increase community and ecosystem resiliency, and reduce global carbon emissions. The YBEMP update can frame and offer opportunities and solutions available now, and opportunities available in the future, to secure communities and ecosystem function by leaning on the components of climate-ready management plans described above in this letter. Creating a climate-ready estuary management plan should be the ultimate goal of Lincoln County to ensure communities and the estuary are ready for future climate challenges.³⁰

Recommendation 2: Include policy, strategies, or actions that address Climate Vulnerability Assessment findings for individual land use applications. Pew is encouraged by the *Climate Vulnerability Assessment* that must be included as part of land use permit applications in the draft YBEMP. In fact, this new requirement is critical to help planners make better land use permit decisions and marks Lincoln County, the City of Newport, and City of Toledo as leaders in climate-ready land use planning in coastal Oregon. The guiding regulation (Statewide Planning Goal 16: Estuarine Resources) for the YBEMP is “to recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries,”³¹ and cannot be achieved in the coming years without planning for changing coastal conditions. However, the draft YBEMP lacks any policy or decision outcomes related to what a project-level vulnerability assessment might conclude. An EMP responsive to climate should include policy or process that follows vulnerability assessment findings. For example, the plan should include environmental thresholds where additional land use planning action will be needed, resource or ‘use’ benchmarks that trigger review of certain land uses, and sunset clauses to disallow certain uses if conditions are no longer safe. Incorporating these elements will help avoid costly additional ‘comprehensive plan’ updates, while allowing more frequent minor climate-related ‘plan amendments’ as needed for the health and safety of the community and estuary.

Recommendation 3: Consider Goal 16 (estuaries) and Goal 17 (shorelands) together while updating the YBEMP. Generally, the Goals are intended to be addressed in a coordinated fashion during planning

³⁰Dalton, M. 2020. [Future Climate Projections for Lincoln County](#). Oregon Climate Change Research Institute.

³¹ OAR 660-015-0010(1): [Statewide Planning Goal 16: Estuarine Resources](#).

processes. See Statewide Guidance Recommendation 2 for details. Importantly, the update process failed to address a provision in Goal 16 which states, “When classifying estuarine areas into management units, the following shall be considered in addition to the inventories: 1. Adjacent upland characteristics and existing land uses; 2. Compatibility with adjacent uses; 3. Energy costs and benefits; and 4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.”

Recommendation 4: All 39 management unit descriptions should be updated with current resource information to guide planners in decision-making and inform the community. Natural resources drive Lincoln County’s economy, and the management of the estuary should be informed by the best available resource data to sustain them. The resource descriptions and management objectives for each unit in the draft, which are required by Goal 16, remain vague and based on decades old data from the original plan despite feedback from the advisory group that natural resource data and information was available and should be incorporated. The planning effort did not lean on the expertise of the science community on Yaquina estuary issues, nor the advisory or technical groups coordinated by the project team to update the unit descriptions. The management objectives should be meaningful and within the authority of local jurisdictions or partner state agencies for units in multi-jurisdictional plan. More attention should be given to creating special policies for each unit based on the resources within the unit, the management aims of its classification per Goal 16³², and changes the unit may experience, either from the human community or a changing climate. Please see the document recently submitted by community members³³ that contains a recommended outline for management unit descriptions of the draft YBEMP and illustrates inclusion of the best available natural resource information.

Conclusion

The task at hand is large, however pieces are in place to provide visionary and much needed leadership to prepare for the future. The needed governance structure was provided in 1972 via the Coastal Zone Management Act while Oregon’s framework for management was provided via Goal 16, Goal 17, the original estuary management plans, and resources classification system. Now, unprecedented amounts of federal funding for coastal resilience and planning are available to adapt and thrive in the coming decades. We must capitalize on this moment in time to ensure the estuary’s health into the future and help coastal communities adapt. Thank you for the opportunity to participate in the update of the YBEMP and to provide comments on the draft and the forthcoming statewide guidance document.

Sincerely,



Elizabeth Ruther
Officer, US. Conservation Program

³² OAR 660-015-0010(1): [Statewide Planning Goal 16: Estuarine Resources](#).

³³ See “Recommended Management Unit Template for Draft YBEMP. Submitted via email July 14, 2023

Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Elizabeth Ruther of PEW

Response date: 7/24/2023, revised 8/29/2023

Thank you for your comment on the draft update to the Yaquina Bay Estuary Management Plan (June 2023) . We received many, detailed comments during the public comment period between June-July 2023 and due to the length and quantity, it is not possible to respond to every single comment/point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, the recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

Due to the narrative nature of the letter, specific comments or critiques have been selected for specific responses.

1) Land Use Plan Framing

Comment: "...we are concerned that the YBEMP is being framed as a land use plan focused predominantly on development, running counter to community needs and contrary to state law. Accordingly, we urge the Steering Committee and the state to return to a fundamental discussion of the challenges ahead and how estuary management plans can help increase resilience of the community and its resources."

Response: Estuary management plans are land use plans that regulate uses and alterations within a specific estuary. The Steering Committee directed the Project Team to update the Yaquina Bay Estuary Management Plan as a land use plan.

2) Create Climate Ready Management Plans

Comment: "Based on Pew's review of the relevant literature, we offer five components of climate-ready management plans to successfully manage land uses and resources under changing coastal conditions.

- i) Climate Scenario Planning
- ii) Climate-related goals and strategies
- iii) Systematic Monitoring
- iv) Adaptive Management
- v) Collaborative Planning and Engagement"

Response: This is an innovative and thoughtful approach to address climate change in estuaries or other landscapes. However, it is and was beyond the scope, capacity, funding, or authority of the Project Team or the Steering Committee to develop Climate Ready Management Plans with the components described. Funding, guidance, and authority would need to be provided to counties to undertake local updates of estuary management plans.

Specific Recommendations for the Yaquina Bay EMP

Recommendation 1: Incorporate more components of climate-ready management plans.

Response: As stated above, this is an innovative and thoughtful approach to address climate change in estuaries or other landscapes. However, it is and was beyond the scope, capacity, funding, or authority of the Project Team or the Steering Committee to develop Climate Ready Management Plans with the components described. Funding, guidance, and authority would need to be provided to counties to undertake local updates of estuary management plans. Specific components of Climate Ready Management Plans, such as Adaptive Management were addressed within the boundaries of static Comprehensive Plans through the inclusion of the new Plan Part XI - Plan Updates. Ultimately, many of these components are better suited for the management of conserved lands. Scenario Planning and resulting climate-related goals and strategies could be undertaken at the estuary scale, but all outcomes of such work would be without any regulatory authority in the absence of new statewide guidance, policy, or Planning Goals.

Recommendation 2: Include policy, strategies, or actions that address Climate Vulnerability Assessment findings for individual land use applications.

Response: Impact Assessments are required for any proposed alterations in an estuary. They are informational in nature and there is no regulatory authority in Goal 16 to establish thresholds beyond requiring that the Impact Assessment's questions be answered. Tying "policy or decision outcomes" to Impact Assessments would exceed the regulatory authority of Goal 16 and subject the DRAFT Plan to potential challenges.

Recommendation 3: Consider Goal 16 (Estuaries) and Goal 17 (Shorelands) together while updating the YBEMP.

Response: Most of Oregon's Statewide Planning Goals exist on a continuum where one land use blends into or is in conflict with another. Some counties have chosen to integrate specific planning goals together when appropriate and others have not. This includes the integration of Goals 16 and 17. However, Lincoln County and the Cities of Newport and Toledo had originally separated the administration of Goals 16 and 17 with the former implemented through an estuary management plan and the latter implemented through each jurisdiction's zoning code. It was decided by the Steering Committee to keep the two Goals separate and only update Goal 16 as they had been originally conceived and have been administered separately for 40 years.

Recommendation 4: All 39 management unit descriptions should be updated with current resource information to guide planners in decision-making and inform the community.

Response: The comments that the Management Unit (MU) descriptions need to be substantially revised and expanded are based principally on the assertions that (a) the revised drafts of the MU descriptions do not take into account current resource inventory information and, (b) that the MU descriptions represent the primary information used by local jurisdictions to make individual land use decisions on proposed estuarine alterations. Neither of these statements is accurate.

The new inventory information proposed for incorporation into the plan was available and informed the evaluation of each Management Unit. This information was considered in revising MU descriptions and in arriving at recommended MU boundaries and classifications. To the extent that errors or omissions were made in interpreting this information for purposes of the MU evaluations, the Project Team is open to specific input to rectify such errors or oversights.

The purpose of the MU descriptions is to provide a summary of the information that is relevant to the establishment of MU boundaries and classifications in accordance with Goal 16 requirements. In an effort to help simplify an otherwise complex document, the brevity is intentional. The MU descriptions are not intended to provide a complete recitation of all known resource information for the unit. Because each description is a summary of information included in the Plan inventory, it is not intended to be used as the primary source of evidentiary information for establishing the record for an individual land use decision. That is the purpose of the Plan inventory, and a principal reason that the plan inventory is adopted as a part of the Plan. It should also be noted that permit applicants and other parties to a land use proceeding may introduce and utilize as evidence any information deemed relevant to a decision, whether or not such information is in the Plan inventory.

Recommendations for the EMP Guidance Document

Response to EMP Guidance Recommendations Below Thank you for these recommendations. They were reviewed and considered during edits to the EMP Guidance document. That document has been submitted to DLCD for internal review prior to public release. Please reach out to DLCD staff if you would like to further review/discuss guidance content prior to public release.

Recommendation 1: Set a strong legal framework in the Guidance and clearly outline 'the possible' within current state and local authorities.

Recommendation 2: Provide clarification in the Guidance on how to update EMPs considering both Goal 16 (estuaries) and Goal 17 (shorelands) per state regulation.

Recommendation 3: Provide a list of new and emerging uses and recommendations for prioritization in the Guidance.

Recommendation 4: Describe the State's technical assistance role and list known coastwide project needs the Coastal Program plans on supporting as part of the Guidance. DLCDC

Recommendation 5: Create a state-hosted coastwide public-facing spatial data viewer accompanying the guidance that contains County resource inventories and additional curated data that is regularly updated.

Recommendation 6: Develop a plan to implement Goal 1 prior to starting an estuary plan update.

Recommendation 7: Prior to starting an update of an estuary management plan, coalesce existing foundational spatial data and a synthesis of non-spatial research that will inform estuary policies, management unit classifications, unit descriptions, resource capabilities for each unit, and special policies per unit.

Comments on YBEMP

1strongcheryl@gmail.com

P15 Climate change- good basic list in Appendix D, but how will the overall management of each estuary will consider the principles in Oregon's Climate Adaptation Framework including embracing flexibility in uncertainty, recognizing that climate change is a 'stress multiplier', and acknowledging that impacts will not be borne equally by all people in a community" be implemented? Would this come at the city and county level? Who is the overseer of these impacts in the estuary as a whole?

P21 suggest adding info about HMSC to the Newport subarea description.

Overall in the subarea descriptions, references to sites (eg McLean Point, Yakona, Coquille, etc) should all appear on the map.

P25 what are the "Identified areas of important wildlife habitat" that shall be protected?
P25 under major committed uses, line six should read Aquatic area alterations are extensive along the EAST shore?

P26 sub-area policies: it should be noted that Yaquina Bay Road is a potential limiting factor in development. Define "needed" development.

P29 "It is recognized that some adjacent shoreland areas will also be needed for developed aquaculture facilities" assume this is on the north side of the subarea?
Existing aquaculture in the area (oyster docks) may also contribute to downstream pollution in the bay in terms of styrofoam breaking loose from the floating docks. I know this is outside the scope of this plan, but addition language should be added about sustainable and appropriate aquaculture.

P35 what are "passive restoration measures"?

P35 Natural management units

Should not allow for "incidental dredging for harvest of benthic species" or should define this, at minimum

P36 Conservation management units

Some of the permissible uses in this category seem at odds with goal to manage and conserve natural resources and benefits, such as: new marinas, mining and extraction, any dredge or fill. These actions have the potential to significantly degrade the estuary.

P40 Was this section not updated because it did not need new definitions? If it does need updating, when would that happen?

P75: MU 10 is a natural MNU and yet "a portion has been identified as a potential future development site. Development of the area within the identified "resource line" shall require a

clear demonstration of need, evaluation of alternate sites, consideration of long-term consequences and a finding of compatibility with adjacent uses in order to justify the needed plan amendment and Goal 16 exception.” This should be removed in the unlikelihood of it ever being developed. Especially since the section it refers to has not been updated (IX).

P79 how are areas suitable for oyster culturing operations defined and located?

P128 Restoration needs: a section on climate change impacts should be included here. The estuary is going to change substantially in the next few decades and needs of humans and resources are also going to change. This should at minimum be acknowledged here (and throughout the document).

P133 Part IX: was this not updated due to not needing an update or lack of time and funding? If not updated now, when will it be updated? Some of these “needs” have definitely changed since 1982. Offshore (renewable) energy and the state of commercial fisheries just to name two of them. At minimum, the parts that are no longer relevant or that conflict with the newly revamped parts of the plan should be identified. And again, some of the proposed development will not be feasible in light of climate change and this should be noted.

P140 some guidelines on how the impact assessment is expected to address climate vulnerabilities is warranted here. Most people are not going to know how to do this. While this might be expected to be covered in a NEPA document and thus written by a consultant for a larger project, how will small projects (not requiring other permits- if such a thing exists) be expected to handle this?

Appendix B: Poole’s Slough- if this is no longer valid it should be removed. Otherwise it should be updated.

Appendix D: climate vulnerability: it’s a good basic list, but should be more incorporated into the plan. Also, I understand from the public meeting that it would be on the proposed developer to determine how their proposed project would be compatible with climate change impacts. Most people will need guidance on how to do this and to what impacts they should be looking for. This plan could do more to help point people in the direction of models or other information that could help them make these decision.

Appendix E: Labels for sites do not appear on map, thus locations unknown.

MAP:

Overall, the mapping is an immense improvement!

Some of the colors are difficult to tell apart. For example, some of the yellows and pinks under Biotic and some of the greens under Historic Veg. Also, a description of each of the categories would be useful. What is the difference between Upland Forest and Woodland?

Label the subareas. Label all sloughs and other points referenced in document.

Show the map of the Management Unit Classifications (p52)

Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Cynthia Strong - 1strongcheryl@gmail.com

Response date: 7/24/2023, revised 8/29/2023

Thank you for your comment on the draft update to the Yaquina Bay Estuary Management Plan (June 2023). We received many, detailed comments during the public comment period between June-July 2023 and due to the length and quantity, it is not possible to respond to every single comment/point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, the recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

Thank you for bulleting your comments. We will adhere to the same structure in response.

- 1. P15: How will the overall management of each estuary will consider the principles in Oregon's Climate Adaptation Framework including embracing flexibility in uncertainty, recognizing that climate change is a 'stress multiplier', and acknowledging that impacts will not be borne equally by all people in a community" be implemented? Would this come at the city and county level? Who is the overseer of these impacts in the estuary as a whole?**

Response: The Climate Vulnerabilities list was developed and vetted by a Technical Sub-Group composed of state and federal regulatory agency staff, researchers, and experts in climate change and estuarine habitats. The uncertainty of climate change is a pervasive issue that is challenging to address in static planning documents. The unequal environmental dispersion of climate change impacts is also a challenge to plan for. The list is inherently static, but as a component of the Plan it can be updated as new information and discovery of additional climate vulnerabilities or feedback loops are discovered. Plan Part XI - Plan Updates outlines the process for specific updates to the Plan.

- 2. P21: suggest adding info about HMSC to the Newport subarea description.**

Response: HMSC is listed in the Major Committed Uses sub-section, "Major uses in the South Beach area include the OSU Hatfield Marine Science Center..."

- 3. P25 what are the "Identified areas of important wildlife habitat" that shall be protected?**

Response: Yakona Nature Preserve and adjacent intertidal habitats

4. **P25 under major committed uses, line six should read Aquatic area alterations are extensive along the EAST shore?**

Response: Your edit has been incorporated. Thank you for correcting it.

5. **P26 sub-area policies: it should be noted that Yaquina Bay Road is a potential limiting factor in development. Define "needed" development.**

Response: Public roads often facilitate development. "Needed" has been removed from the last sentence of Existing and Potential Conflicts - thank you for the suggestion.

6. **P29 "It is recognized that some adjacent shoreland areas will also be needed for developed aquaculture facilities" assume this is on the north side of the subarea? Existing aquaculture in the area (oyster docks) may also contribute to downstream pollution in the bay in terms of styrofoam breaking loose from the floating docks. I know this is outside the scope of this plan, but addition language should be added about sustainable and appropriate aquaculture.**

Response: Aquaculture standards would be better suited for changes to Plan Part V - Estuarine Use Standards. This section will be part of a future update to the Plan as determined by Lincoln County and the Cities of Newport and Toledo.

7. **P35 what are "passive restoration measures"?**

Response: From Appendix A - Definitions: PASSIVE RESTORATION: The use of natural processes, sequences or timing to bring about restoration after removal or reduction of adverse stresses.

8. **P35 Natural management units should not allow for "incidental dredging for harvest of benthic species" or should define this, at minimum**

Response: All language in this section is taken directly from Statewide Planning Goal 16 and is not subject to change or it would bring the Plan outside of alignment with its authorizing Goal.

9. **P36 Conservation management units - Some of the permissible uses in this category seem at odds with goal to manage and conserve natural resources and benefits, such as: new marinas, mining and extraction, any dredge or fill. These actions have the potential to significantly degrade the estuary.**

Response: All language in this section is direct from Goal 16 and is not subject to change or it would bring the Plan outside of alignment with its authorizing Goal.

10. **P40 Was this section not updated because it did not need new definitions? If it does need updating, when would that happen?**

Response: Part V - Estuarine Use Standards was determined to be a Tier 2 priority and to be updated by the local jurisdictions at a later date. The time and analysis needed to update this

Plan Part was not possible under the project and grant timeframe. See Part XI - Plan Updates for more information on Tier 2 recommendations.

- 11. P75: MU 10 is a natural MNU and yet "a portion has been identified as a potential future development site. Development of the area within the identified "resource line" shall require a clear demonstration of need, evaluation of alternate sites, consideration of long-term consequences and a finding of compatibility with adjacent uses in order to justify the needed plan amendment and Goal 16 exception." This should be removed in the unlikelihood of it ever being developed.**

Response: Updating Part IX was identified in the assessment as a Tier 2 priority and therefore is not addressed in the draft update. However, this issue was raised during two Town Halls and Lincoln County staff did some digging to provide the following answer. Many people have, with good cause, pointed out that it does not make sense to both protect this area with exceptional natural resources and identify it for development. It is merely a legacy holdover from the original EMP and has no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

- 12. P79 how are areas suitable for oyster culturing operations defined and located?**

Response: That is determined by experts and future oyster restoration or farming applicants.

- 13. P128 Restoration needs: a section on climate change impacts should be included here.**

Response: Climate change is referenced throughout the document and research on landward migration zones due to projected sea level rise was incorporated into the list of potential restoration sites. All background information on climate change is included in Plan Part I - Introduction.

- 14. P133 Part IX: was this not updated due to not needing an update or lack of time and funding? If not updated now, when will it be updated?**

Response: Plan Part IX - Future Development Sites was not updated during this planning process due to a lack of capacity and time required for the economic analyses needed. See above for more information on the Plan Part's removal due to being obsolete.

- 15. P140 some guidelines on how the impact assessment is expected to address climate vulnerabilities is warranted here.**

Response: Climate Vulnerability has been added in the draft update as a factor to be addressed in the required impact assessment of proposed estuarine alterations. (Goal 16, implementation requirement 1). The Goal 16 Impact Assessment requirement is informational and does not establish any approval criteria or threshold. Other implementation requirements establish

these thresholds; i.e., implementation requirement 2, and the requirement for consistency with the resource capabilities for certain uses. These requirements must consider all impacts, including climate vulnerabilities, identified in the Impact Assessment. Impact Assessments are developed in coordination with planning staff at local jurisdictions.

On page 139 and 140, text provides guidance as to scaling the Impact Assessment to the project... "The Impact Assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive."

It was determined that an example on how the Climate Vulnerabilities might be addressed in an Impact Assessment should be included in the EMP Guidance document instead of in the Plan itself as that could insinuate thresholds which do not exist. That has been completed and the EMP Guidance document was drafted by the Project Team. It was submitted to DLCD and will be under internal review prior to public release.

16. Appendix B: Poole's Slough- if this is no longer valid it should be removed. Otherwise it should be updated.

Response: Appendix B is not included in the DRAFT Plan

17. Appendix D: climate vulnerability: it's a good basic list, but should be more incorporated into the plan.

Response: Please see the response to P128 and P140.

18. Appendix E: Labels for sites do not appear on map, thus locations unknown.

Response: Appendix E is the list of potential restoration sites that accompanies Map 17: Restoration Sites. The labels in Appendix E correspond to the labels in Map 17.

19. Maps: Some of the colors are difficult to tell apart. For example, some of the yellows and pinks under Biotic and some of the greens under Historic Veg.

Response: Color schemes were determined by standardized color ranges or as prescribed by the creator of the data via its metadata.

20. Maps: Also, a description of each of the categories would be useful. What is the difference between Upland Forest and Woodland?

Response: While descriptions for each of the CMECS maps would be beneficial, there is not ample space required for the many visualized features for each CMECS map. These features are technical terms within each field (i.e.: biotic, substrate, etc.) and not easily defined on a map inventory. However, a new Appendix G - CMECS Data Descriptions was created to describe the visualized CMECS data features.

21. Label the subareas. Label all sloughs and other points referenced in document.

Response: Sub-areas are labeled on Map 2 - Sub-Areas.

22. Show the map of the Management Unit Classifications (p52)

Response: The Map of Management Unit Classifications is at the start of Plan Part VI.

Ethan Brown, Willamette Partnership

Re: Comments on Yaquina Bay Estuary Management Plan

Date: 7/14/2023

From: Fran Recht, Pacific States Marine Fisheries Commission, Habitat Program

Thank you, the steering committee and the advisory group for your work on the YBEMP. The GIS maps are a big improvement to the prior plan. I also appreciate the inclusion of climate change information in the plan that should help inform decision makers of likely changes and risks.

I have made edits and added comments within the attached document. In addition, I want to highlight the need for Lincoln County to petition DLCDC to amend Goal 16 to allow, as an outright use, active habitat restoration activities in natural and conservation units of the estuary. In light of the continuing challenges with listed species and climate change, it is imperative that active restoration activities such as dike removal, ditch filling, channel creation, and log placements designed to restore tidal wetlands by restoring hydrology and creating complexity, occur without barriers such as conditional use permits. I would also like to suggest that DLCDC be asked to remove aquaculture as a conditional use in natural estuary units. The prohibitions currently in Goal 16 [against dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or use of removable in-water structures such as stakes or racks] are insufficient to conserve the natural resource values of the estuary because of eelgrass impacts, shading and disturbance of the benthic habitat, scouring of the bottom by equipment sitting on the bottom at low tide, potential impacts of non-native species, the impacts of boat use for harvest activities, etc. Aquaculture use is appropriate conditionally for a conservation unit.

I have made note of legacy special policies, dredge spoil sites and future development sites that are no longer appropriate, 50 years later, knowing what we know now of the natural resource values of tidal wetlands and other estuarine habitats that sustain the recreational and commercial fishing industries and cultural uses in the estuary. It would be inefficient and conflict laden to wait to update these sections through another lengthy and costly amendment process when we could do these things now. Specifically, the following sections such be removed during this current YBEMP update process:

- The Special policy that allows the deepening of the channel and turning basin in the Sally's Bent MU (MU 10). Such deepening would greatly alter the hydrology, potentially scouring and eroding eelgrass beds, causing more salt water intrusion, altering the habitats and ecological communities in this area, as well as making the area more vulnerable to tsunami impacts and other factors. This is inappropriate in a natural unit and especially inappropriate in a natural unit as significant as Sally's Bend. ODFW made the following comments (p. 68) in July 2019 regarding the potential hydrological impacts of the deepening and widening of the Coos Bay channel for the Jordan Cove project on estuarine resources (Oregon State Agency Comments on FERC's Draft Environmental Impact Statement for Docket Nos. CP 17-494-000 and CP 17-495-000 (Jordan Cove Energy Project LP and Pacific Connector Gas Pipeline LP DOJ File No. : 0ES456-ES456) and these concerns would be applicable here as well (document available on request):

- Alteration of the hydrodynamic characteristics of the Coos Bay estuarine tidal basin in response to deepening and widening, including:
 - Physical changes in the intrusion of marine waters, coupled with alteration of the salinity regime, conductivity, exchange volume, tidal prism, tidal currents, and other parameters
 - Shifts in the location, configuration, and spatial extent of marine-dominated, estuarine, and freshwater-tidal habitats
 - Changes in the composition of ecological communities that reside within the water column, marine-dominated, estuarine, and freshwater-tidal habitats
 - Changes in the location and potential for rearing of juvenile fish

Additionally, there are potential impacts of channel deepening and widening specifically on eelgrass habitats of such importance in Sally's Bend. Boese and Robbins (2008)* examined the importance of a variety of factors influencing the distribution of eelgrass in Yaquina estuary. They found that erosion of eelgrass was an important factor in winter, the season during which the highest flow events in the estuary occur. The study compared sites with eelgrass on steep slopes with eelgrass on shallow slopes. Erosion of sediments with exposure of the roots and rhizomes of the eelgrass plants tended to be greater on steep slopes (see Fig 8 below). They observed that eelgrass on steeply sloped sites was more vulnerable to loss due to factors such as shifts in tidal drainage channels and log impacts. The study also found that eelgrass seed density in sediments was less on steeply sloping sites, potentially limiting the ability of eelgrass to recruit as successfully on steeper slopes.

Deepening and widening of navigation channels will tend to increase erosion of sediments along the sides of the channel, resulting in steeper slopes. As documented by Boese and Robbins, this is likely to have negative consequences for the eelgrass beds in adjacent areas.

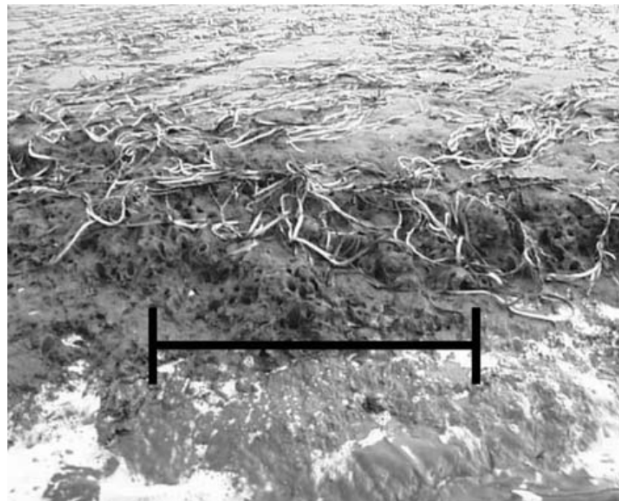


Figure 8 *Zostera marina*: lower intertidal shoots in a steeply sloped area near study site 6 with large numbers of exposed rhizomes during winter. Scale bar=1 m.

* Boese, Bruce L., and Bradley D. Robbins. "Effects of erosion and macroalgae on intertidal eelgrass (*Zostera marina*) in a northeastern Pacific estuary (USA)." (2008): 247-257.

- The Future Development area in Sally's Bend that would allow an exception to be applied within the "development" line. Such development with its new channels and uses would alter the hydrology and impact the exceptional eelgrass and other natural resources in Sally's Bend. This use would never be allowed today, could not be mitigated, and would create great controversy in the community and with natural resource agencies.
- The Special policy and Exception granted to allow oyster seed culture in Poole Slough Management Unit 19. The seed nursery production that was subject to this special policy was never undertaken and since then The Wetlands Conservancy has acquired most all the tidal marsh land surrounding the Oregon Oyster Company property for conservation. (That is, the property is no longer owned by the Newport Pacific Corporation which had specific plans subject to this exception).

Poole Slough (along with McCaffery Slough, MU 18 were noted by Laura Brophy (1999) to have the largest acreages of undisturbed (or minimally disturbed) tidal marsh in the Yaquina estuary. This exception is contrary to all the efforts to acquire and restore Poole Slough (including a site restored for ODOT mitigation purposes). The exception for seed oyster larvae culture in Poole Slough is archaic, like the log storage designation, and should be removed from this updated plan. There has been no demand for such use for 50+ years and would not likely be approved by resource agencies today. Removal of this exception would reduce conflict, one of the stated goals of the YBEMP.

- Similarly, the legacy dredge disposal area at the mouth of Poole Slough should be removed during this comp plan update. Dumping dredge materials in a natural area is contrary to the purposes of the natural area designation and would not be approved today. It should be removed to reduce unnecessary resource agency work in defeating an inappropriate use. Upland sites are available for dredge material disposal (e.g. see attachment from Greenpoint Consulting) and tidal marsh disposal is an archaic and inappropriate use.
- In Management Unit 20, Johnson Slough is mentioned as a future aquaculture development site. Such a use would be inappropriate today. This is an intact and major natural area (containing substantial areas of tidal marsh) and knowing what we now know about the importance of tidal wetlands, allowing intensive commercial aquaculture would create unnecessary conflict. New aquaculture areas should only be allowed in Conservation Units of the estuary.
- Update MU 33 description to reflect that the area has been restored and remove this unit as a future development site.
- Remove Flesher Slough (MU21) from the Mitigation site lists, as restoration is proposed through the Focused Investment Partnership to install a bigger culvert to restore better tidal connectivity.

Thank you for your attention

cc Lisa Phipps, DLCD

Attachments:

2008 Letter to Port of Toledo from Greenpoint Consulting re upland disposal sites
Recht- Mark up of YBEMP document

Yaquina Bay Estuary Management Plan Update

Public Engagement Response Letter

Responding to: Fran Recht

Response date: 7/24/2023, revised on 8/29/2023

Thank you for your comment on the draft Yaquina Bay Estuary Management Plan . We received many, detailed comments during the public comments of June-July 2023, and due to the length and quantity, it is not possible to respond to each individual point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCDC.

In addition, recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

COMMENTS & RESPONSES

Comment: Active restoration should be allowed as an outright use.

Response: Local plans cannot be more permissive than Goal 16, which requires discretionary review of proposed active restoration measures. This change in the plan could only be made if a corresponding amendment to Goal 16 were enacted

Comment: Remove aquaculture as an allowed use in natural management units.

Response: While it would be permissible for the local plan to prohibit this use permitted by Goal 16, no evidence has been presented that such a prohibition is warranted. Aquaculture has been practiced on a limited basis in some natural management units in Yaquina Bay (e.g., King Slough) without apparent conflict. The draft plan and implementing regulations propose to retain aquaculture as a conditionally permitted use in natural management units, subject to case-by-case review.

Comment: Remove Sally's Bend Sub Area policy 2.

Response: Sally's Bend Sub Area policy 2 is informational. It acknowledges that periodic maintenance dredging of the federally authorized navigation channel does and will continue to take place within the sub-area, which is otherwise comprised of areas classified and managed

for natural resource protection. It also notes that any expansion of the channel and/or turning basin would require additional alteration of protected natural resource areas. This policy statement does “allow” or otherwise authorize such channel expansion; it only points out the fact that should such an expansion occur, it would, due to the location of the existing channel, adversely impact otherwise protected natural resource areas.

Comment: Remove Sally’s Bend, Johnson Slough, and MU 33 from Part IX, Future Development Sites.

Response: This issue was raised during two Town Halls and Lincoln County staff did some digging to provide the following answer. Many people have, with good cause, pointed out that it does not make sense to both protect this area with exceptional natural resources and identify it for development. However, this is merely a legacy holdover from the original EMP and has no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

Comment: Remove Poole Slough Goal 16 exception.

Response: Appendix C, Goal Exceptions, was not addressed as part of the current update. As pointed out, the Goal 16 exception that authorizes aquaculture development at Poole Slough appears largely obsolete. However, because the exception has not been evaluated as a part of this update, any initiative by the county to repeal or otherwise alter this portion of the appendices should be preceded by a complete analysis and consultation with the current property owner.

Comment: Remove designated DMD site at Poole Slough.

Response: The Dredged Material Disposal Plan was developed and adopted separately from the YBEMP and was not evaluated for update as part of the present YBEMP update project. As has been pointed out in this and other comments, elements of the Dredged Material Disposal Plan are in need of reevaluation. Rather than eliminating specific individual sites from the plan, it is recommended that such a reevaluation be done in a holistic manner, with a current, estuary-wide analysis of dredged material disposal needs and an updated identification of feasible methods and available sites that meet identified disposal needs. This is a significant project in and of itself.

Comment: Remove Flesher Slough (MU21) from the Mitigation site lists, as restoration is proposed through the Focused Investment Partnership to install a bigger culvert to restore better tidal connectivity.

Response: The status of the site on the mitigation site list should be reevaluated based on the details offered in this comment.

Oregon Shores Conservation Coalition
P.O. Box 5626, Coos Bay, OR 97420
(503) 754-9303

To:

Ethan Brown and Nicole Maness
Willamette Partnership

Lisa Phipps, Program Manager
Oregon Coastal Management Program

Meg Reed, Coastal Policy Specialist
Oregon Coastal Management Program

Comments re: YBEMP draft plan elements offered for public comment

Thank you for the opportunity to comment on the draft materials of the Yaquina Bay Estuary Management Plan update as made available for public comment. The Oregon Shores Conservation Coalition has commented at each stage of the update process. We appreciate the planners' responsiveness to past comments made by Oregon Shores and other advisory committee members. The plan update has evolved considerably during the course of its development. We are glad to see the addition of climate change vulnerabilities to the impact assessments, and the expansion of restoration sites. At this stage of the process, the planners deserve much credit for cleaning up and modernizing the portions of the plan included in the update; the plan is now far more user-friendly and easier to interpret.

We have five broad areas of concern, relating to what is absent from this "Tier 1" update, and must either be completed in this update, or clearly identified within the plan elements to be adopted now as necessary future work for a full, comprehensive update of the YBEMP (i.e., Tier 2 and Tier 3 as originally described). It is essential that a commitment to these broader planning objectives be adopted in the language of the update now under consideration, since the state's "guidance document" for future estuary management planning is to be based on the YBEMP process.

Commitment to Tier 2 Planning

Taken as Tier 1 of three intended "tiers" (sequential groupings of priorities) the plan update process to this point can be considered largely successful. We note some specific concerns below, but on the whole, the current update draft brings the YBEMP elements forward to present-day standards, and lays the foundation for the more comprehensive revision that is essential if the plan is to address the needs and challenges of the coming decades. But many fundamental elements are not included in the update documents to date, and are critical to the

completion of planning for Yaquina Bay. Where these elements are not contained in the plan updates currently under consideration, it is essential that the update as adopted include an unambiguous commitment to the continuation of the planning process to those areas identified in the original scoping process and deferred to “Tier 2” and “Tier 3” (where changes in regulation or statute may be needed, as is likely), as well as to additional aspects noted below.

In short, it must be made clear that the EMP elements included in the current update draft do not constitute a comprehensive plan update, but are a first phase in a longer-term, far-reaching planning effort to prepare for managing the Yaquina Bay estuary through the challenges arising over a period of decades. We urge that the current (Tier 1) update include language explicitly committing to a continuing process (as “Tier 2” or by any other name) that addresses all of the original areas consigned to Tier 2, among other key elements. The full plan should include, in addition to aspects discussed in more detail below:

- Climate change impacts and mitigation strategies (the statements about climate vulnerabilities that have been added to the Tier 1 plan elements are an excellent first step, but don’t constitute an actual plan to deal with these impacts and are merely informational)
- Provision for upslope habitat migration in the course of adapting to inevitable sea level rise and maintaining ecosystem resilience
- Species and habitat protections, with particular regard to ESA-listed species and species of concern identified in the Oregon Conservation Strategy
- Water quality impacts, which would necessitate linking the estuary to its watershed (and thus might require a change in regulations to enable planners to take the watershed into account in the EMP)
- Linkage of the estuary to its adjoining shorelands, which requires integrating Goal 17, Goal 5, and Goal 7 with Goal 16, and would evidently require a regulation change through Tier 3
- Detailed restoration planning, which again will require integrating Goal 17 with Goal 16

As we understand that a guidance document is being prepared for DLCD based on this YBEMP update process, for use in updating other EMPs through the Oregon coastal region, we urge that all of these elements, and those discussed below, be included as necessary aspects of a fully updated EMP. More on the guidance document at the conclusion of these comments.

As the first step in a more comprehensive planning process, the Tier 1 EMP update provisions under review at present represent a significant advance, and we applaud all the diligent work that went into them. But their value is strictly contingent on continuation of EMP planning to Tier 2—and where needed, Tier 3—planning for the Yaquina Bay estuary, so as to adequately prepare for coming challenges. Although these recommended updates are stated in the Plan Updates section (pg. 149), the comprehensive update is not complete until the entire plan is fully re-evaluated. We ask that the proposed Plan Update section, as it is presented to the local governments for adoption, embed a clear commitment to the next stages of necessary planning. Identifying the work that remains to be done should be a key element in this first update.

Plan Updates and Adaptive Management

We are pleased to see our previous recommendations on adaptive management reflected in the current draft's Plan Update section. This is important for allowing the document to adapt with the rapidly changing conditions of the estuary and needs of the community. However, the structure of adaptive management as described in the plan falls short of the concept. Adaptive management is a structured, iterative process of robust decision-making in the face of uncertainty, with an aim to reduce uncertainty over time via system monitoring. It is useful in the context of managing natural resources in the face of climate change, because it allows planners to monitor how conditions are changing, create and test management strategies (i.e. climate mitigation), evaluate how well those management strategies are working, and then adapt the plan accordingly, despite the high degree of uncertainty acknowledged in the Plan Update section (pg. 147).

Although the present draft plan acknowledges several instances where adaptive updates may be needed, it does not outline a structured process to monitor, re-evaluate, analyze plan success, and then adapt the plan to changing needs, nor does it give a suggested timeline to go through this process. The boundaries of the estuary are not the only thing changing as a result of climate change. Critical resources are being lost, coastal hazards are becoming more severe, and habitats are migrating upslope. Therefore, a truly adaptive structure should be incorporated into the Plan Update section to prompt a periodic review of resource inventory data and plan effectiveness every five years or so, and follow through with needed updates. This would allow targeted updates to occur more frequently to match the rapidly changing conditions of the estuary.

Additionally, there is an opportunity to use an adaptive management structure to evaluate how well the new climate vulnerability impact assessments work to allow planners to address hazards, and evolve this climate strategy accordingly. As suggested in [DLCD's Sea Level Rise Planning Guide](#), "the plan could include time-based triggers to review hazard datasets on a regular basis (e.g., every five years) to continue to adopt and use the best available information." Such time-based triggers for plan adaptation and a protocol for monitoring plan success should be embedded in Part 11-Plan Updates. Additionally, new tools such as the abovementioned sea level rise planning guide are constantly being created, and a periodic review of the plan would create an opportunity to draw on those resources for new ideas to develop a strong climate mitigation plan in the long-run. Without a robust system to monitor the effectiveness of planning strategies and learn from past mistakes and successes, the county will never be able to increase resilience and mitigate the effects of climate change within the EMP framework.

Adaptive management, it should go without saying, is a component of a fully updated estuary management plan, not a substitute for completing the work needed as Tier 2 and Tier 3 priorities.

Mitigation and Restoration

While we applaud the expansion of the restoration sites included in this plan update, there are still a handful of considerations that must be addressed.

First, it is stated in the Mitigation and Restoration section (Part 7) that, “mitigation refers only to compensatory measures to *offset* the adverse impacts of dredging and filling in intertidal or tidal marsh areas through creation, restoration and enhancement of estuarine areas.” Not only is it concerning that mitigation is referred to as an offset technique, but the definition is in contrast to other state and federal definitions that refer to mitigation as “project design features or other measures that serve to avoid and reduce adverse impacts to critical habitat.” This limited definition of mitigation in the YBEMP leaves habitats, such as eelgrass and tidal marshes, vulnerable to degradation and habitat loss without appropriate measures taken to minimize harm.

The justification for this narrow definition of mitigation is that it is the definition stated in Goal 16. However, Goal 16 is the floor and not the ceiling. There is no legal or Goal 16 consistency reason that the definition and concept of mitigation could not be expanded to include avoiding adverse impacts to critical habitat. In fact, inconsistencies in the definition of mitigation in relation to other state and federal regulatory processes add further complexity and limited usability for users seeking permits to dredge or alter the estuary. In order to rectify this conflict in language and remain consistent with Goal 16, we would strongly suggest expanding the definition of mitigation beyond Goal 16 to include “project design features or other measures that serve to avoid, reduce, or compensate for adverse impacts of any type of aquatic area alteration.”

The definition of mitigation could also be expanded to include mitigation measures for other alterations aside from dredge/fill. Impacts from lost wildlife habitat as a result of upland development, increased commercial activities in the estuarine environment, or other impacts to nearshore and intertidal areas that result from in-water activities within the estuary should be contemplated within the definition of “mitigation.”

Additionally, the inadequate concept of mitigation within this plan update draft undermines restoration goals outlined in the plan. The goal of restoration is to “re-establish functional characteristics and processes lost by past alterations.” If no effort is made to avoid or minimize habitat degradation in the first place, no meaningful habitat enhancement or gain can be achieved at the estuary scale. Meanwhile, both restoration and true mitigation are more important than ever, considering all the cumulative impacts and threats to estuarine ecosystems outlined in the climate change sections of this plan. Minimizing further damage and stress is more crucial than ever, particularly considering that opportunities for restoration are limited (as stated in the plan) and have only been applied to tidal marsh, and not eelgrass meadows.

Furthermore, the limitations and challenges of restoration should be noted in this section. Restoration of some estuarine habitats is an extremely difficult, time-consuming, labor-intensive, and expensive process that cannot completely return a degraded area to its original state and function. Restoration success is also condition-dependent. For example, habitats like eelgrass are not easily restored if conditions for growth (e.g., water quality) are altered too much. The

language of this section makes it sound as though it is easy to engineer ecosystems and replace estuarine resources. Given that this is not the case, this incomplete section sets a dangerous path for the ecosystem integrity of Yaquina Bay.

Last, there is no consideration or mention of native Olympia oysters in the mitigation and restoration section. Olympia oysters are being actively restored in Yaquina Bay. Olympia oyster reefs serve an essential ecosystem function in improving water quality, cycling nutrients, providing habitat structure and food for many species, and reducing shoreline erosion. These ecosystem services are all similar to those of aquatic vegetation, yet they aren't mentioned in the plan. [The mid-region of the estuary \(from Sally's Bend to Oysterville\) has been determined to offer conditions most suitable for Olympia oyster re-establishment](#), so native oyster restoration sites should be identified and integrated into the restoration plans for this region of the estuary. At the minimum, sites under active oyster restoration (overseen by ODFW), should be mentioned in the plan management units so re-establishment can be supported.

Re-establishment of Olympia oysters in Yaquina Bay is a recent effort, so it is not reflected in the 1982 plan. This offers an example of the kinds of new and emerging uses to which the EMP must respond, and demonstrates why adapting the EMP more frequently and thoroughly, incorporating new resource information, is critical to ensure adequate consideration and conservation of Yaquina Bay's resources.

Management Unit Descriptions

It is unclear exactly what process was used to update the management unit section and the advisory committee has received mixed information about whether resource information was used at all to update MUs. This is a principal concern because resource information is intended to be the basis for designating management units, which directly determine the fate of each section of the estuary. Prior to making any MU updates, it is essential that natural resource inventories are used to critically assess each individual management unit to determine if: 1) the management unit designation from the originally plan were successful in meeting management objectives for each unit; 2) natural resources of major significance have shifted or declined; and 3) new resource information needs to be integrated (such as with Olympia oysters). Because the resource maps were not released until the end of the planning process, and specific information about how management units were evaluated was not made transparent to the advisory group or the public, we remain skeptical that this important work was ever done appropriately. Important questions remain: What resources were considered important, or to be of "minor" or "major" significance? Were natural resource experts or representatives from ODFW consulted in this work? Was the MU analysis documented so it can be re-produced later? What data was used?

Regardless of this process, the Management Unit description section for each MU also ought to be enriched with more robust information about historic and present resources of importance, the value those resources offer people, and the expected challenges and considerations for each MU. We have contributed to a template and example document, "Recommended Management Unit Template for YBEMP Update," demonstrating what MU descriptions should look like. (Submitted separately; we include a copy with this comment.) The value of adding more detailed

information about the natural resources present in each unit cannot be understated. The management units constitute the primary information used by local jurisdictions to make impactful decisions about the uses of our estuary. The management units are also used by the general public, applicants, researchers, and state agencies to inform on a variety of projects. Furthermore, the information and classification for each MU determines the management objective for each unit. At present, these objectives are vague and unenforceable because detailed information is absent. So, updating the MU section with more detailed descriptions of natural resources would provide clarity on what resources are present and why they are important to estuarine function or the community, so that they may be better managed and protected.

It was clearly stated in the Needs and Gaps Assessment that a full revision of the Management Unit section of the plan was a Tier 1 priority for this plan update. However, this update was not done appropriately or comprehensively, lacking a complete analysis of the resources in each MU, historical and present, with the aid of natural resource experts and guidance of the Advisory Group. There is a critical need to continue this MU update process, which underscores the importance of continuing to the next phase of planning when Tier 2 priorities are being addressed. We therefore urge that the Tier 1 plan update state very strongly that revisiting all MU is a necessary aspect of Tier 2.

Inappropriate Sections of the Plan

- Under Plan Part III: Sub-Area Policies, Sally's Bend, the following provisions should be removed:

- Under Existing and Potential Conflicts: "If increases in deep water shipping precipitate a demand for expansion of the current channel and turning basin, some loss of natural resource values would result from the required dredging."
- Under Sub-Area Policies: "It is recognized that some alteration of the sub-area will be required in conjunction with the maintenance and possible expansion and/or deepening of the deep water channel and turning basin."

These provisions, which treat expansion of the channel as an inevitability, are inappropriate because embedded in them is the implicit pre-approval of extensive dredging in a sub-area which the Plan itself acknowledges "represents one of the most important natural resource areas of Yaquina Bay." Moreover, the Sub-Area Policy 1 provides that: "[t]he primary objective in the Sally's Bend sub-area shall be to manage to **preserve and protect natural resources.**" (emphasis added). In light of this, the above provisions are not only inappropriate, but also render the sub-area policies applicable to Sally's Bend internally conflicted. Moreover, Sally's Bend is within Management Unit 10, which is currently classified as Natural. Under Goal 16, natural units "shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes," and, with regard to navigation channels,

dredging is not a permissible use in natural management units beyond where “necessary for on-site *maintenance* of existing functional tidegates and associated drainage channels . . .” (emphasis added). The above provisions, which contemplate dredging for “expansion” of the channel in addition to mere maintenance, are in contravention of the directives of Goal 16.

- Under Plan Part IX: Future Development Sites, the entire section regarding Sally’s Bend is inappropriate and should be removed for the reasons articulated above.

Regardless of the inclusion of this section, should Lincoln County later decide to redesignate Sally’s Bend from Natural to Development, it would have to be by a post-acknowledgement plan amendment. As such, this section is not only inappropriate, but serves no functional purpose within the Plan.

- Under Appendix C: Goal Exceptions, the previously taken Goal 16 Exception to Allow Aquaculture Development at Poole’s Slough is outdated, inappropriate, and should be removed. The exception, which was incorporated in the original 1982 Lincoln County Estuary Management Plan, has never been acted upon in the 40 some intervening years, and is unlikely to be—the property is no longer owned by Newport Pacific Corporation, the applicant for the exception. While reasons may have existed at the time which justified such an exception, they no longer do—there is currently no demand for such a use. Accordingly, the exception should be removed from the Plan.

Other notes

Maps: The maps are much improved and the map viewing tool makes the data far more accessible. One necessary addition to the map inventory is that there should be a bathymetry map, if such data is available. This is particularly the case because “deep-water areas adjacent or in proximity to the shoreline” are a justification for a designating a Development MU, according to Goal 16. What is considered “deep”?

Part II – Overall Management Policies

§§ 2 and 3 provide for consideration of conservation and preservation of, and also access to, culturally important tribal resources. These subsections could go further to provide for consultation with tribes and nondisclosure of sites.

§ 4 limits dredge and fill and other uses which could alter the estuary. There is a typo under this subsection: Item “e.” should be a separate § 5 because “other uses and activities” are not “dredging and/or filling.” In keeping with the structure and language of Goal 16, the subsections should be organized as follows:

“4. Dredging and/or filling shall be allowed only:

a. [. . .]

d. [. . .]

5. Other uses and activities which could alter the estuary shall only be allowed if the requirements in b., c., and d. are met.”

Part V – Estuarine Use Standards

Shoreline Stabilization. In § 4 there is an omission in the sentence; between “shall” and “the purpose,” “serve” should be inserted.

Restoration. § 1 provides that: “Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.” This provision is odd, in that it seems to in effect prohibit all restoration, since it is impossible to prove that there could not be a conflict with future, unknown development proposals.

Part VI – Management Units

Management Unit 2 and 14. If these units contain important natural resources, is it appropriate for it to be classified as Development? Specifically, it is potentially concerning that, whereas there is currently only shallow-draft navigation in the unit, its classification as a development unit would make deep-draft dredging permissible. Also, Special Policy 1 of this unit has a typo; “usshould” should be corrected to “should.”

Management Unit 31. If this unit has fish migration routes that are considered significant, how was the conclusion reached that it is an “area of minimal biological sensitivity,” and therefore appropriately classified as Development? Definitions of “significant” and “non-significant” resources should be provided and an explanation given to clarify why some resource areas are considered more important than others.

Statewide Guidance Document

The Yaquina Bay Estuary Management Plan Tier 1 update draft under consideration takes on special significance as the apparent basis for a statewide “guidance document” being prepared by the Department of Land Conservation and Development and Oregon Coastal Management Program for use in all of Oregon’s other estuaries.

In commenting on the current, Tier 1 draft elements of the YBEMP update, we have oscillated between matters that should be addressed in this first phase, and elements that should be priorities for further updates. In these cases, our recommendation has been that the current update include a clearly stated commitment to address these elements in a continuing effort to create a truly comprehensive plan.

However, the guidance document must span what has been divided among three tiers of priority in the YBEMP process. The priorities were a matter of sequence, not ultimate importance. The document should outline the full scope of work necessary to develop far-reaching plans that will

guide management of these vital ecosystems in order to meet the major challenges of climate change, species and habitat loss, and development pressures for decades to come.

The first thing to be said is that the guidance document should be released to the public and subject to a full public comment process. The updated estuary management plans will largely determine our success in preserving the ecological functioning of these critical ecosystems of the Oregon coastal region. At stake is the future resilience of coastal communities, economies, and ways of life, and the experiences of all other Oregonians who visit the coast in their millions, not to mention all the other species with which we share these environments. Oregonians should have a voice in decisions about this future.

The guidance document should incorporate all the technical and functional improvements and modernizations that have been part of the initial update Tier 1 process, as well as lessons learned and important comments that could not be addressed in the current scope of work. It should also include all of the elements that were recommended to be updated as Tier 2 and Tier 3 priorities in the Needs and Gaps Assessment, and those we identified that should be priorities for future revisions.

We urge that the guidance document include language explicitly recommending that the following components be addressed in subsequent EMP updates, either in Yaquina Bay or elsewhere in the state:

- Provision for upslope habitat migration in the course of adapting to inevitable sea level rise and maintaining ecosystem resilience—the guidance document should guide local planners in researching their planning and legal alternatives.
- Strategies for dealing with other climate vulnerabilities—not simply stating the nature of these vulnerabilities, but providing a template for addressing managed retreat vs. hardening shorelines, flooding, changing patterns of sedimentation, etc. This is where adaptive planning is especially important—the approach to such strategies may shift as real-world conditions, especially climate effects, continuously change, and the plan should contain triggers that lead to reconsideration as conditions change.
- Species and habitat protections, with particular regard to ESA-listed species and species of concern identified in the Oregon Conservation Strategy. This is a matter of particular concern, in that statements were made at many points during the draft plan process to the effect that land use plans don't take into account these resource issues. Goal 16 is being taken as a straitjacket, not a minimum statement of what is needed, that can open out into wider vistas.
- Water quality impacts, which would necessitate linking the estuary to its watershed (and thus might require a change in regulations—i.e., a Tier 3 question—to enable planners to take the watershed into account in the EMP).
- Linkage of the estuary to its adjoining shorelands, which requires integrating Goal 17, Goal 5, Goal 7, and in some cases Goal 18, with Goal 16. If this would require a regulation change, then it should be included as a Tier 3 element. However, the language of Goal 16 clearly refers to relating the estuary to its adjacent shorelands, so we would argue that the idea that EMPs are limited strictly to the technical boundary (i.e., MHHW), and can't consider adjacent lands, is mistaken.

- Clear, detailed definition of mitigation and explication of how and where it is anticipated to occur, including special policy recommendations for water quality and avoidance of habitat degradation.
- Careful review of all management units and associated management objectives, with detailed descriptions of their resources based on the most current available data and strengthened management objectives (note the example of an expanded MU description we offer separately). Review of MUs should be done in light of analysis of new and emerging uses (or proposed uses) of the estuary, with guidance from natural resource experts, and with full consideration for the historical and present extent of such resources.
- Detailed restoration planning, which again will require integrating Goal 17 with Goal 16. Planning for the estuary should include its entire historical footprint. Restorable, formerly estuarine lands should be part of the plan; the artificial distinction that gated lands are not part of the EMP until the gates are opened, whereupon they instantly become part of the plan, should be dispensed with.
- Special provision should be made for Olympia oyster sites in restoration plans, given the particular value of restoring this native species to the ecosystem.
- The guidance document should assist planners in creating a truly adaptive plan, containing within itself provisions for monitoring, measuring results, and triggering reviews and updates of specific elements or the plan as a whole.
- The guidance document should set forth a distinct timeline in which acquisition of data and development of updated maps comes first, followed by public review of the maps, before further planning steps are taken. This timeline should meet the requirements of Goal 1 by including public involvement at every stage. The document should spell out for local planners the steps needed to fulfill Goal 1 obligations—how to meaningfully engage the public at every stage.
- DLCD should serve as a central clearinghouse for relevant data, so that local planners, who may not have independent technical capacity, can access the data needed for updated maps and planning based on resource data. Beyond this, the document should include detailed explanations of available technical resources, links, etc.
- Where there are legal or regulatory issues, i.e., matters to be dealt with under Tier 3, the guidance document should clearly outline the legal status of strategies under consideration. Ideally, it would suggest a common proposal for changes needed in statute or regulation to enable truly comprehensive planning. This would include the results of an analysis of how many Goal 16 exceptions have been sought and granted or denied and review LUBA appeal cases to determine what needs to be fixed from a legal perspective from case law.
- The guidance document should walk planners through all the relevant rules and procedures needed to match EMP land use planning with resource and regulatory agencies. Where CZMA questions arise, DLCD should provide assistance.
- Engage Tribes immediately as the EMP process begins. The guidance document should assist local planners in understanding engagement with sovereign Tribes. Meetings with tribal councils should be offered. The guidance document can provide information about planning for cultural resources including relevant laws.

Oregon Shores Conservation Coalition—YBEMP Comment—7-14-23

Thank you again for carefully considering all of our comments. We appreciate the hard work you have done to greatly improve the Yaquina Bay Estuary Management Plan.

Phillip Johnson, Conservation Director
Annie Merrill, Land Use Coordinator
for the board and staff of the Oregon Shores Conservation Coalition

Yaquina Bay Estuary Management Plan Update

Public Engagement Response Letter

Responding to: Phillip Johnson, Oregon Shores Conservation Coalition

Response date: 7/24/2023, revised on 8/29/2023

Thank you for your comment on the draft Yaquina Bay Estuary Management Plan . We received many, detailed comments during the public comments of June-July 2023, and due to the length and quantity, it is not possible to respond to each individual point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCDC.

In addition, recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

COMMENTS & RESPONSES

Comment: Commit to completion of Tier 2 work tasks at a time certain.

Response: The Needs and Gaps Assessment designated three of 15 identified modernization tasks as “Tier 2”, meaning that these three tasks were deemed to be beyond the scope of the current update process. At present, there are no identified sources of funding that would allow the local governments (Newport, Toledo and Lincoln County) to commit to specific timelines to undertake these tasks.

It should be noted that the three Tier 2 tasks affect only two of the current ten plan parts. The 12 Tier 1 tasks identified in the assessment have been completed, the result being that the remaining eight plan parts have been comprehensively updated and/or revised. It is not correct that the completion of the Tier 2 work identified in the assessment would constitute a more "comprehensive" or "in depth" update. To the contrary, the Tier 1 priorities were selected to ensure that the foundational components of the plan; especially the spatial elements (i.e., MU boundaries and classifications) and the plan implementation provisions, along with the overall policies, mitigation and restoration, and sub-area guidance, were all fully updated.

Comment: The proposed requirements to assess climate change vulnerabilities don't constitute an actual plan to deal with these impacts and are merely informational.

Response: Addressing climate change vulnerabilities has been integrated into the draft update as a factor to be addressed in the required impact assessment of proposed estuarine alterations. (Goal 16, implementation requirement 1). It is correct that the impact assessment requirement is informational and does not establish any approval criteria or threshold. However, other implementation requirements establish these thresholds; i.e., implementation requirement 2, and the requirement for consistency with the resource capabilities for certain uses. These requirements must consider all impacts, including climate vulnerabilities, identified in the impact assessment. However, an example of how the climate vulnerabilities might be utilized in an Impact Assessment has been provided as an appendix to the EMP Guidance document.

Comment: Address provision for upslope habitat migration in the course of adapting to inevitable sea level rise and maintaining ecosystem resilience.

Response: Guidance for addressing changes to the jurisdictional extent of the estuary due to sea level rise are provided in the proposed new Part IX, Plan Updates. Addressing potential impacts of upslope migration to upland uses or infrastructure is not within the scope of the YBEMP.

Comment: Species and habitat protections, with particular regard to ESA-listed species and species of concern identified in the Oregon Conservation Strategy, are not addressed.

Response: The YBEMP addresses habitat and species protection in two fundamental ways. First, the advance decision making represented by the delineation and classification of management units in compliance with Goal 16 ensures that the most critical habitats and resources of the estuary are placed in either natural or conservation management units, designations that either prohibit or highly restrict development that would adversely impact these resources.. Second, the Goal 16 implementation requirements which are embedded into the plan, establish rigorous tests for authorizing significant estuarine alterations, including but not limited to the minimization of adverse impacts and the replacement of lost or damaged resources.

Comment: Water quality impacts, which would necessitate linking the estuary to its watershed, are not addressed.

Response: The regulation of water quality is the responsibility of the State Department of Environmental Quality, not the local jurisdictions that adopt and administer the YBEMP. The DEQ's responsibilities under Goal 16 are set forth in Goal 16, implementation requirement 9.

Comment: The plan should integrate Goal 17, Goal 5, and Goal 7 with Goal 16.

Response: The YBEMP is currently structured to fulfill the spatial planning and implementation requirements of Goal 16; it is not directly applicable to adjacent shoreland areas. Local government land use authorities (Newport, Toledo and Lincoln County) have in place

coordinated land use designations and implementing regulations for adjacent shorelands that comply with Goal 17. The scope of the current project is to modernize the YBEMP; the project scope does not extend to a review and revision of the existing city and county comprehensive plan elements that implement Goal 17, which would be a complex undertaking. As required by Goal 16, proposed revisions to the YBEMP include consideration of the adjacent upland characteristics and existing land uses. In addition, to ensure coordination with estuarine designations, general policy guidance for the planning of adjacent shorelands is provided in the Sub-Area policies.

It should also be noted that resources that are addressed under Goal 16 and Goal 17 are not subject to Goal 5 [see OAR 660-023-0240 (2)].

Comment: Plan should provide detailed restoration planning.

Response: The basic purpose of the YBEMP is to establish a spatial basis for the allocation of uses and development within the estuary. The function of the restoration site inventory within the plan is primarily to ensure that management units that either encompass or are adjacent to potential restoration areas are designated to accommodate restoration activity and avoid conflicts. Establishing priorities among sites or establishing policies to guide or control restoration strategies is beyond the scope and purpose of the YBEMP. Because such a prioritization would not be binding on project funders or sponsors, it would serve no functional purpose.

Comment:: Commit to time certain updates of the plan and prescribe requirements for adaptive management.

Response: The draft update includes a new plan part that provides a description of the plan amendment process and general policy direction on the issues and situations that may warrant evaluation for amendments or updates. Given that local resources for future plan updates are unknown, policy that prescribes mandatory deadlines for plan updates is not recommended.

As described in the plan, the plan amendment process is set by state statute, and includes mandatory notices and multiple public hearings, among other due process requirements. Due to the rigidity and relative complexity of this process, creating a prescribed process or mandatory triggers for ongoing adaptation of relevant plan provisions is not a practicable approach.

Comment: Expand definition of mitigation.

Response: Several commenters have advocated for incorporating the definition of “mitigation” employed by state and federal regulatory authorities, rather than the narrower, more specific definition used in the Statewide Planning Goals. These alternative definitions incorporate avoidance and reduction of adverse impacts (followed by compensation) in a hierarchy of preferences. Commenters have stated that because the current goal definition of mitigation is limited to compensation for impacts of dredge or fill in tidal wetlands through resource replacement, this means that local permit decisions are not required to consider avoidance or

reduction of impacts. This represents a misunderstanding of Goal 16 implementation requirements.

Implementation requirement 2 of Goal 16 requires a showing, for all estuarine alterations, that “adverse impacts are minimized”. Correspondingly, implementation requirement 1 directs required impact assessments to include a showing of “methods which could be employed to avoid or minimize adverse impacts”. These provisions are incorporated into implementing land use regulations and represent the functional equivalent of the more expansive state and federal definition of “mitigation”, but expressed in different terminology. Local decision makers must make findings supported by substantial evidence against these criteria in reviewing proposed estuarine alterations.

To avoid confusion and ensure alignment with Goal 16 and Oregon’s estuarine resource replacement policy (ORS 196.830), retaining the current Statewide Planning Goals definition of mitigation is recommended.

Comment: Sites being managed for native oyster restoration (overseen by ODFW), should be identified in applicable management unit descriptions.

Response: This information was overlooked in the revision of the management unit section and will be added.

Comment: Expand and revise Management Unit Descriptions

Response: The comments that the Management Unit Descriptions need to be substantially revised and expanded are based principally on the assertions that (a) the revised drafts of the MU descriptions do not take into account current resource inventory information and, (b) that the MU descriptions represent the primary information used by local jurisdictions to make individual land use decisions on proposed estuarine alterations. Neither of these statements is accurate.

The new inventory information proposed for incorporation into the plan was available and informed the evaluation of each management unit. This information was considered in revising MU descriptions and in arriving at recommended MU boundaries and classifications. To the extent that errors or omissions were made in interpreting this information for purposes of the MU evaluations, the project team is open to specific input to rectify such errors or oversights.

The purpose of the MU descriptions is to provide a summary of the information that is relevant to the establishment of MU boundaries and classifications in accordance with Goal 16 requirements. In an effort to help the readability of an otherwise complex document, the brevity is intentional. The MU descriptions are not intended to provide a complete recitation of all known resource information for the unit. Because each description is a summary of information included in the plan inventory, it is not intended to be used as the primary source of evidentiary information for establishing the record for an individual land use decision. That is the purpose of the plan inventory, and a principal reason that the plan inventory is adopted as a part of the plan. It should also be noted that permit applicants and other parties to a land use proceeding

may introduce and utilize as evidence any information deemed relevant to a decision, whether or not such information is in the plan inventory.

Comment/recommendation: Remove references in Sally's Bend sub area to potential channel expansion (Sally's Bend Sub Area policy 2.)

Response: The description of the impacts of an expansion of the current navigation channel within the Sally's Bend sub-area description, and Sally's Bend Sub Area policy 2, are informational. These statements acknowledge that periodic maintenance dredging of the federally authorized navigation channel does and will continue to take place within the sub-area, which is otherwise comprised of areas classified and managed for natural resource protection. These statements also note the fact that any expansion of the channel and/or turning basin would require additional alteration of protected natural resource areas. The description and policy statement do not serve to approve, permit or otherwise authorize such channel expansion; they simply point out the fact that should such an expansion occur, it would, due to the location of the existing channel, adversely impact otherwise protected natural resource areas.

Comment: Remove Sally's Bend, Johnson Slough, and MU 33 from Part IX, Future Development Sites.

Response: This issue was raised during two Town Halls and Lincoln County staff did some digging to provide the following answer. Many people have, with good cause, pointed out that it does not make sense to both protect this area with exceptional natural resources and identify it for development. However, this is merely a legacy holdover from the original EMP and has no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

Comment: Remove Poole Slough Goal 16 exception.

Response: Appendix C, Goal Exceptions, was not addressed as part of the current update. As pointed out, the Goal 16 exception that authorizes aquaculture development at Poole Slough appears largely obsolete. However, because the exception has not been evaluated as a part of this update, any initiative by the county to repeal or otherwise alter this portion of the appendices should be preceded by a more detailed analysis and consultation with the current property owner.

Comment: What is the rationale for the proposed development classification of MUs 2, 14 and 31?

Response: These management units are proposed for classification as development based on Goal 16 designation criteria. Specifically, Management Unit 2 accommodates, among other alterations, the south jetty and the associated spur jetty and groins. As such, it is an area that provides for navigation (through deep draft navigation improvements) that require major alterations of the estuary. Management Unit 14 is an area of deep water adjacent to the shoreline and has been developed for water dependent uses. Management Unit 31 is a deep-water area adjacent to the urbanized shoreline in Toledo; it supports numerous water dependent uses and attendant alterations.



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July 14, 2023

Lisa Phipps
Oregon Coastal Program Manager
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

RE: Public comment for draft Yaquina Bay Estuary Management Plan and Estuary Statewide Guidance

Dear Ms. Phipps and Project Leads:

Thank you for the opportunity to provide feedback on the Yaquina Bay Estuary Management Plan (YBEMP) update.

The Nature Conservancy is a science-based, nonpartisan organization committed to conserving the lands and waters on which all life depends. In Oregon, TNC has over 80,000 supporters and members in every county. Based in communities around the state, we manage lands and waters in varied ecosystems and partner with ranchers, farmers, fishers, and timber and environmental interests on some of the most challenging conservation issues facing people and nature.

Estuaries are exceedingly valuable for the biodiversity they harbor and for the ecosystem services that they provide to resident and migratory species and the people that live in proximity to and visit them. Estuaries provide nursery habitat for many of Oregon's most valuable coastal commercial and recreational fisheries including crab, salmon, and steelhead. Despite their enormous importance and value to both biodiversity and humans, estuaries represent some of the most degraded habitats and continue to be stressed by threats from human activities on the ocean, on land, and in freshwater. In the Yaquina Basin, there are thirty species of conservation concern, five taxa are federally listed, and six are state listed. Of the 30 species of conservation concern, six (green sturgeon, chum salmon, coho salmon, steelhead, Gmelin's saltbush, and Point Reyes bird's beak) occur in the estuary and are the taxa most affected by the estuarine processes.

The Nature Conservancy appreciates the significant effort that has been made to date by all the partners and stakeholders to update the 40-year-old plan. The draft plan is a good start at providing the protection that public and natural resources need for a healthy functional estuary for years to come. The Nature Conservancy invested staff time into the planning process and created new data depicting possible estuary restoration opportunity areas. While much work has gone into the current plan, the planning process has room for improvement, and we hope the necessary time and effort will be put into making it the best possible plan. There are also many lessons to learn from this process that the Coastal Program can glean by soliciting the perspectives of the steering committee, advisory committee, other participants and the public to inform the success of future estuary management plan updates and the development of statewide guidance.

Below we provide feedback on topics we consider key to address in a complete plan that meets the needs of planners, the public, natural resource managers, and the resources themselves in a changing climate.

- Goal 1 needs to be better integrated early into the planning process so citizens have the opportunity to be involved in all phases of the planning process, and ample time to review all materials, not just review of draft products.
- In the future, estuary management plans should be revisited on a regular and timely interval that appropriately reflects change within the estuary (e.g., every 5 – 10 years). The adaptive management process should begin with an analysis of past successes, failures, and changes that have occurred.
- Before kicking off future EMPs the latest natural resource information should be gathered and made available to the planning team and the public. This step should support reevaluation of the management units based on the best available science, past performance, and future climate scenarios.
- Goal 17 should be integrated into the plan and upslope areas adjacent to management units addressed concurrently. This will, among other things, allow for migration of habitat driven by sea level rise to be considered comprehensively and proactively.
- Mitigation, as defined in the YBEMP, is limited to dredge and fill actions and does not meet current state and federal standards for reduction and avoidance of impacts to natural resources. In addition, the new and emerging science supporting the use of dredge spoil materials capacity to contribute to mitigation, restoration and resiliency should be incorporated into the EMP.
- Although the threats of climate change are addressed in the EMP, the plan must include analyses of future climate scenarios, incorporate natural climate solutions and measures for climate adaptation.
- In addition to these thematic comments, we have provided some specific edits and comments to the current draft for your consideration. The Nature Conservancy also recently completed a new Yaquina Estuary Restoration Opportunity (YERO) database and request that it be added as a data source to the Restoration Sites section.

The Nature Conservancy asks the County and the State to commit to completing Tier 2 of this crucial work and looks forward to supporting this ongoing effort. Thank you for considering our comments and for working towards a bright future for Yaquina Bay.

Thank you,

A handwritten signature in cursive script that reads "Jen Carter".

Oregon Coast and Marine Director
The Nature Conservancy

Specific comments on Draft Yaquina Estuary Management Plan

- Estuary boundary should use the Coastal Marine and Ecological Classification Standard (CMECS) boundary, which DLCD developed and uses for Oregon estuaries. It is mentioned on pg. 13, but not used in the map.
 - If this is because of a definition in Goal 16, that needs to be updated to use CMECS before using this same process for other Oregon estuaries.
- The use of the * symbol below the headings is confusing (see pg. 17). There are no * symbols in the text that is below it. The meaning of the symbol needs to be explained or it should be dropped.
- There is a disconnect between the “Potential Conflicts Sections” and climate change vulnerability, for example:
 - Promoting aquaculture when climate change will increase acidification
 - Expanding the airport in the estuary zone while also expecting flooding from sea level rise
- In the Toledo sub-area section (pg. 31-32),
 - The assertion that “No major conflicts exist within the sub-area.” seems like a narrow interpretation of conflicts: what about water quality issues and diked off Olalla Slough?
 - In the “Sub-area Policies” section, #4 states that “If not needed for water-dependent development, the diked areas along Depoe and Olalla Slough should be protected as potential restoration sites”. There is no justification for why development should take precedence. The phrase “If not needed for water-dependent development,” should be dropped from this sentence.
- In Part IV Classification System:
 - The Natural Management Unit definition excludes tidal swamps with woody vegetation. These spruce swamp and scrub-shrub habitats are very important, have sustained the most losses coastwide and need protection. In the Yaquina Estuary, 92% of these habitats have been lost; the remainder should be protected.
 - The permissible uses section (pg. 35) only lists “passive restoration measures”. Does this really need to be restricted to "passive" restoration? What about adding large wood?
 - In the uses that may be allowed section (pg. 36), communications facilities seem incompatible unless it is just power lines and those should be included in “e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation;” further down in the list
- Part VI (starting on pg. 51)
 - Putting the maps first before the description and other text for each of the management units would make it easier for the reader to follow.
 - The identifying place names used in the descriptions should be added to the maps
 - The value “carbon sequestration” should be added to descriptions of natural tidal wetlands, not just productivity and wildlife values
 - In the Special Policies section of Unit 19 (pg. 91-92), it seems imprudent to destroy natural salt marsh for an oyster facility with acidification looming from climate change
 - Unit 34 (pg. 122-123) has good-sized tidal swamp areas (~19 ac.) that should be protected. This portion of Unit 34 should be separated from it and made a Natural Management Unit: MU34B.
- PART VII - MITIGATION AND RESTORATION (starting on pg. 126)

- The Nature Conservancy has recently completed a new Yaquina Estuary Restoration Opportunity (YERO) database that should be added as a data source for the Restoration Sites section.
- On pg. 128-129, this reference should be included:
 - Brophy, L.S., and M.J. Ewald. 2017. Modeling sea level rise impacts to Oregon's tidal wetlands: Maps and prioritization tools to help plan for habitat conservation into the future. Corvallis, Oregon: Estuary Technical Group, Institute for Applied Ecology. Prepared for the MidCoast Watersheds Council, Newport, Oregon. Accessed 3/20/2018 at http://www.midcoastwatersheds.org/s/Modeling-SLR-impacts-to-Oregon-tidal-wetlands-12_1_2017.pdf.
- The Mitigation section should include tidal swamps. The document overall does not mention this critical habitat.
- Throughout the document the term "tidal marsh" should be replaced with "tidal wetlands" to encompass the full range of these important habitats and the massive loss of wooded tidal wetlands should be acknowledged.
- What is the "planning period"?
- On pg. 131 Mitigation Sites, Figure 2 should be referenced
- Part IX
 - Remove offshore oil & gas section
 - Remove north portion of MU33 for log storage, that area has already been restored
- While mentioning climate change impacts throughout is good, the plan is insufficient at assessing, integrating and planning for these important impacts that will have economic and ecological impacts on the estuary. Climate change needs to be revisited and better incorporated into this estuary management plan.
- Appendices are mislabeled: it goes from A to C, but Appendix B is mentioned in the text.

Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Jena Carter, The Nature Conservancy

Response date: 7/24/2023, revised 8/29/2023

Thank you for your comment on the draft update to the Yaquina Bay Estuary Management Plan (June 2023). We received many, detailed comments during the public comment period between June-July 2023 and due to the length and quantity, it is not possible to respond to every single comment/point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, the recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

Thank you for structuring your comments as bullets. Responses will follow the same format.

- **Goal 1 needs to be better integrated early into the planning process...**

Response: Public outreach was completed at the direction of the Steering Committee and during the COVID-19 pandemic. To accommodate the new virtual working world, a website was launched with an input form. During periods of lower COVID-19 levels, community conversations were held by the Project Team at convening organized by community groups. More public engagement during the ideation phase of the process would have been undertaken during more normal times. This recommendation however was incorporated into the EMP Guidance document which specifically recommends earlier input opportunities for public engagement.

- **Estuary management plans should be revisited on regular and timely intervals...**

Response: The draft update includes a new plan part that provides a description of the plan amendment process and general policy direction on the issues and situations that may warrant evaluation for amendments or updates. Given that local resources for future plan updates are unknown, policy that prescribes mandatory deadlines for plan updates is not recommended. As described in the plan, the plan amendment process is set by state statute, and includes mandatory notices and multiple public hearings, among other due process requirements. Due to the rigidity and relative complexity of this process, creating a prescribed process or mandatory triggers for ongoing adaptation of relevant plan provisions is not a practicable approach.

- **Before kicking off future EMPs the latest natural resource information should be gathered and made available to the planning team and the public.**

Response: ODFW created and has updated its CMECS dataset with one of its chief purposes being the updating of Oregon’s estuary management plans. That dataset is the backbone of the DRAFT Plan’s map inventory. That data is publicly available. Collection, calibration, and visualization of the full map inventory was performed by the University of Oregon’s Institute for Policy, Research, and Engagement team and took in excess of a year. The overall project timeline lasted two and a half years, including an extension provided by NOAA, the funder. It is unrealistic to expect a separate full data inventorying process to be undertaken prior to any planning process within a normal project timeline, unless it was to be completed across the entire coast and provided to jurisdictions prior to their updates.

- **Goal 17 should be integrated into the plan and upslope areas adjacent to management units addressed concurrently.**

Response: The YBEMP is currently structured to fulfill the spatial planning and implementation requirements of Goal 16; it is not directly applicable to adjacent shoreland areas. Local government land use authorities (Newport, Toledo and Lincoln County) have in place coordinated land use designations and implementing regulations for adjacent shorelands that comply with Goal 17. The scope of the current project is to modernize the YBEMP; the project scope does not extend to a review and revision of the existing city and county comprehensive plan elements that implement Goal 17, which would be a complex undertaking. As required by Goal 16, proposed revisions to the YBEMP include consideration of the adjacent upland characteristics and existing land uses. In addition, to ensure coordination with estuarine designations, general policy guidance for the planning of adjacent shorelands is provided in the Sub-Area policies.

- **Mitigation, as defined in the YBEMP, is limited to dredge and fill actions and does not meet current state and federal standards for reduction and avoidance of impacts to natural resources. In addition, the new and emerging science supporting the use of dredge spoil materials capacity to contribute to mitigation, restoration and resiliency should be incorporated into the EMP.**

Response: Several commenters have advocated for incorporating the definition of “mitigation” employed by state and federal regulatory authorities, rather than the narrower, more specific definition used in the Statewide Planning Goals. These alternative definitions incorporate avoidance and reduction of adverse impacts (followed by compensation) in a hierarchy of preferences. Commenters have stated that because the current goal definition of mitigation is limited to compensation for impacts of dredge or fill in tidal wetlands through resource replacement, this means that local permit decisions are not required to consider avoidance or reduction of impacts. This represents a misunderstanding of Goal 16 implementation requirements.

Implementation requirement 2 of Goal 16 requires a showing, for all estuarine alterations, that "adverse impacts are minimized". Correspondingly, implementation requirement 1 directs required impact assessments to include a showing of "methods which could be employed to avoid or minimize adverse impacts". These provisions are incorporated into implementing land use regulations and represent the functional equivalent of the more expansive state and federal definition of "mitigation", but expressed in different terminology.

To avoid confusion and ensure alignment with Goal 16 and Oregon's estuarine resource replacement policy (ORS 196.830), retaining the current Statewide Planning Goals definition of mitigation is recommended.

Use of dredged spoils materials are regulated at the federal and state and federal level.

- **Although the threats of climate change are addressed in the EMP, the plan must include analyses of future climate scenarios, incorporate natural climate solutions and measures for climate adaptation.**

Response: Estuary management plans are developed and adopted into county comprehensive plans in order to regulate uses and alterations inside the estuary. That authority is derived from Statewide Planning Goal 16 which outlines that the data inventory is used to describe the features of each estuarine area in order to receive a classification of Natural, Conservation, or Development. Climate scenario planning would inherently not describe current conditions and could not be utilized to classify any Management Units. A separate policy vehicle, or through state policy change, is needed to accomplish these goals. However, it was not within the scope of this project, timeline, or through the direction of the Steering Committee that climate scenario planning be completed as part of this update.

- **Estuary boundary should use the Coastal Marine and Ecological Classification Standard (CMECS) boundary, which DLCD developed and uses for Oregon estuaries.**

Response: The estuary boundary is the regulatory extent of the Plan. That estuary boundary was calculated using three criteria for whichever is furthest. These include the Mean Higher High Water mark (MHHW), head of tide, and the line of non-aquatic vegetation. DRAFT Plan: "For the purposes of this plan, the jurisdictional extent of estuaries extends upstream to the head of tide." (page 4). Appendix A - Definitions: ESTUARY: ...Estuaries extend upstream to the head of tide; their landward extent is Mean Higher High Water or the line of non-aquatic vegetation." (page 151). The combination of the three were factored together through the work of staff at the University of Oregon's Institute for Policy, Research, and Engagement. That combination of criteria were confirmed by staff at the Oregon Department of Land, Conservation and Development and the Department of State Lands.

- **The use of the * symbol below the headings is confusing (see pg. 17). There are no * symbols in the text that is below it.**

Response: An objective of the DRAFT Plan is to reduce reader confusion. The * symbol will be removed.

- **There is a disconnect between the “Potential Conflicts Sections” and climate change vulnerability...**
Response: The inclusion of Climate Vulnerabilities does not preclude uses or alterations that are permissible or conditionally allowed for a given classification. Oregon’s Statewide Planning Goal system is designed to mediate between conflicts and competing land uses. Similarly, Climate Vulnerabilities are intended to help inform potential estuarine alterations that could have negative impacts on the estuary due to interaction with climate change projected impacts. Moreover, due to the systemic nature of climate change and potential for feedback loops, the Potential Conflicts sub-section would be overwhelmed by potential issues due to climate vulnerabilities rather than its intended purpose to describe anticipated land use conflicts.

- **Toledo Sub-Area section p31-p32:**
 - **The assertion that “No major conflicts exist within the sub-area.” seems like a narrow interpretation of conflicts: what about water quality issues and diked off Olalla Slough?**
Response: Potential Conflicts sub-section is intended to describe land use conflicts.

 - **In the “Sub-area Policies” section, #4 states that “If not needed for water-dependent development, the diked areas along Depoe and Olalla Slough should be protected as potential restoration sites”. There is no justification for why development should take precedence. The phrase “If not needed for water-dependent development,” should be dropped from this sentence.**
Response: Depoe Slough is within Management Unit 31 which is classified as Development. Development Management Units prioritize development activities, but active and passive restoration are permissible. Goal 16: “Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses... ; and activities identified in (1) [Natural] and (2) [Conservation] above shall also be appropriate.” Down river sections of Olalla Slough have already been restored and are now the proposed Management Unit 31a. The tide gate in Olalla Slough is maintained to ensure the upstream freshwater intake for the Georgia Pacific plant. The phrase “if not needed for water-dependent development” will not be recommended to be removed.

- **The Natural Management Unit definition excludes tidal swamps**
 - **Response:** The edit has been included in Plan Part IV - for Natural classification.

- **The permissible uses section (pg. 35) only lists “passive restoration measures”. Does this really need to be restricted to "passive" restoration?**
Response: Local plans cannot be more permissive than Goal 16, which requires discretionary review of proposed active restoration measures. Authorizing this change would necessitate an amendment to Goal 16.

- **In the uses that may be allowed section (pg. 36), communications facilities seem incompatible unless it is just power lines and those should be included in “ie. Pipelines, cables and utility crossings, including incidental dredging necessary for their installation;” further down in the list**

Response: Language is directly sourced from Goal 16. No change to be made.

- **Part VI - Putting the maps first before the description and other text for each of the management units would make it easier for the reader to follow.**

Response: This is a personal preference of the commenter; members of the Project Team had the opposite preference for layout. No change to be made

- **Part VI - The identifying place names used in the descriptions should be added to the maps**
Response: This comment would require visualizing multiple other layers including biotic, soft-sediment fauna, tide gates, etc... which would, along with text labels, clutter the maps and make them challenging to interpret by estuarine land owners.

- **Part VI - The value “carbon sequestration” should be added to descriptions of natural tidal wetlands, not just productivity and wildlife values**

Response: A new paragraph has been added on ecosystem services provided by the estuary with a focus on carbon sequestration to Part I - Introduction. It was determined that carbon sequestration is occurring in likely all management units and sub-areas and therefore describing it in each would be redundant.

- **Part VI - In the Special Policies section of Unit 19 (pg. 91-92), it seems imprudent to destroy natural salt marsh for an oyster facility with acidification looming from climate change**

Response: The special policy in question is a Goal Exception. Appendix C, Goal Exceptions, was not addressed as part of the current update. As pointed out, the Goal 16 exception that authorizes aquaculture development at Poole Slough appears largely obsolete. However, because the exception has not been evaluated as a part of this update, any initiative by the county to repeal or otherwise alter this portion of the appendices should be preceded by a complete analysis and consultation with the current property owner.

- **Part VI - Unit 34 (pg. 122-123) has good-sized tidal swamp areas (~19 ac.) that should be protected. This portion of Unit 34 should be separated from it and made a Natural Management Unit: MU_{34B}.**

Response: This habitat, tidal scrub/shrub, is contiguous and in excess of 20 acres. It has been segmented off from MU₃₄ as a new MU_{34B} due to a Steering Committee decision. The choice was made to not merge into MU_{34A} as they are different habitats.

- **Part VII - The Nature Conservancy has recently completed a new Yaquina Estuary Restoration Opportunity (YERO) database that should be added as a data source for the Restoration Sites section.**

Response: A call for publicly published plans and strategies to be included in the Potential Restoration Sites was issued to the Advisory Group (of which TNC is a member), multiple times. If the data has been publicly published in a Strategy or Plan, please share the spatial data with the Project Team and it will be provided to the County and DLCDC for potential inclusion prior to the Plan Amendment process which must be completed by the jurisdictions prior to the DRAFT Plan's adoption. Thank you!

- **Part VII - The Mitigation section should include tidal swamps. The document overall does not mention this critical habitat.**

Response: Mitigation section is primarily sourced from Goal 16, for instance, "dredge or fill activities are permitted in intertidal or tidal marsh areas..." Tidal swamps are intertidal habitat and therefore are included within the compensatory mitigation requirements. Other intertidal habitats are not listed in this section and so tidal swamps would be a specific reference.

- **Throughout the document the term "tidal marsh" should be replaced with "tidal wetlands" to encompass the full range of these important habitats and the massive loss of wooded tidal wetlands should be acknowledged.**

Response: Tidal Marsh is a term that is used throughout Goal 16 and will need to remain in its current locations and should not be replaced with tidal wetlands which has a slightly different definition.

- **Part VII - What is the "planning period"?**

Response: The planning period encompassed the original 1982 planning period for the Lincoln County Estuary Management Plan as the mitigation sites list was not changed as it was determined there were still ample sites identified as potential locations for intertidal mitigation.

- **Part VII - On pg. 131 Mitigation Sites, Figure 2 should be referenced**

Response: This was an oversight and has been corrected. Thank you for this suggestion.

- **Part IX - Remove offshore oil & gas section. Remove north portion of MU33 for log storage, that area has already been restored**

Response: Plan Part IX - Future Development Sites was not updated during this process. However, due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

- **While mentioning climate change impacts throughout is good, the plan is insufficient at assessing, integrating and planning for these important impacts that will have economic and ecological impacts on the estuary. Climate change needs to be revisited and better incorporated into this estuary management plan.**

Response: In order to further assess, plan, and integrate climate change impacts and vulnerabilities in the Yaquina Bay EMP, guidance, policy change, or goal change must occur at the state level. The climate change information and vulnerabilities incorporated into the Plan represent the extent of what was determined to be defensible under Goal 16 and approved by the Steering Committee.

- **Appendices are mislabeled: it goes from A to C, but Appendix B is mentioned in the text.**

Response: Appendix B was not included in the original Yaquina Bay EMP document provided by Lincoln County. The Project Team has searched for the Appendix without success.

Mr. Ethan Brown ethan@willamettepartnership.org
Partner, Community & Water Willamette Partnership
1300 SE Stark Street, Suite 212 Portland, OR 97214
Phone: (503) 841-5466

July 14, 2023

RE: Draft Yaquina Estuary Management Plan

Dear Mr. Brown,

Thank you for the opportunity to provide comments on the draft Yaquina Estuary Management Plan (YEMP) on behalf of Portland Audubon representing over 16,000 members across the state. Portland Audubon was founded in 1902 and is the oldest environmental conservation organization in Oregon. Our mission is to “inspire all people to love and protect birds, wildlife and the natural environment upon which life depends”. We have worked on statewide issues since our founding in 1902 and have a long legacy of conservation work on Oregon’s coast. Just south of Yaquina Estuary we own and manage the 216 acre Tenmile Creek Sanctuary near Cape Perpetua.

We are invested in the outcome of the YEMP for a number of reasons. First, the Yaquina Estuary is an important migratory bird stopover area and is designated as a state-level Important Bird Area regularly hosting thousands of waterfowl and shorebirds¹ and supports critical habitats for other wildlife and fish populations as well supporting commercially important fisheries. Second, the estuary contains habitats that can play an important role in helping meet Oregon’s climate change goals through carbon sequestration (e.g. tidal forested wetlands can sequester more carbon than many other habitat types). Third, it is our understanding that the Yaquina estuary management plan update will serve as a template for other estuary management plan updates across Oregon and so has broader statewide conservation implications.

Finally, many of our members recreate on the Yaquina Estuary and Portland Audubon regularly leads bird ecotours in the area and so we have on-the-ground investment and involvement in the region.

We appreciate the work the Willamette Partnership, the Advisory and Technical Committees and relevant agencies and county governments have done so far to update the plan. We appreciate the updates in language, the incorporation of climate change vulnerability considerations into the plan, the list of restoration and mitigation sites, and the development of the map viewer tool. However, we see a lot of work ahead for this plan to be sufficiently effective and robust. Please consider the following recommendations to improve the plan:

Overall comments:

Unfortunately Statewide Planning Goal 1 (Citizen Involvement) has been limited in the estuary planning process to date. There should be a full range of natural resource information included in the YEMP so the public can make informed decisions in making recommendations to improve the plan. For example, the web mapping tool does not contain information on key taxa (see

[1https://gis.audubon.org/portal/apps/sites/?_gl=1*6das08*_ga*MjgwODM2MTAzLjE2NjEzNTM5NjA.*_ga_X2XNL2MWT*MTY4ODE0NDIxNC40NC4xLjE2ODgxNDQyNjQuMTAuMC4w#/nas-hub-site](https://gis.audubon.org/portal/apps/sites/?_gl=1*6das08*_ga*MjgwODM2MTAzLjE2NjEzNTM5NjA.*_ga_X2XNL2MWT*MTY4ODE0NDIxNC40NC4xLjE2ODgxNDQyNjQuMTAuMC4w#/nas-hub-site)

1. comments below) thus the management unit section is vague and not based on up-to-date information (see comment #4 below). Moving forward more effort needs to be made to include adequate information in a timely manner so the public can make informed recommendations.
2. There needs to be a set date on periodic reviews of the plan. Currently the plan is vague and says "...time interval for comprehensive updates will be long." (see pg. 146 of plan). We recommend a minimum 15 year interval (or less) for major updates to the plan and the specific timeline should be clearly indicated in the plan. It is important to have clear timelines for plan updates especially when using an adaptive management approach.
3. The county must commit to a Tier 2 update and this commitment should be described specifically within the YEMP. The current plan does not include enough detail in the Management Units (MUs). MUs will need to be re-evaluated since new resource inventory information is not currently incorporated in the plan. Important sections of the plan have still not been updated since 1982 (i.e. Estuarine Use Standards - Part V and Future Development Sites - Part IX). The updated plan will be incomplete without those sections revised so that must be part of the Tier 2 update. We understand that it will require additional funding to complete a Tier 2 planning effort therefore there should be a funding plan included in the YEMP (or as a stand-alone document) that lays out a Tier 2 budget, potential funding sources and a strategy to obtain needed funds.
4. Integrate Goal 17: We are pleased to see that the plan incorporates climate vulnerabilities and the map viewer includes Sea Level Rise and corresponding Landward Migration map scenarios. However, the plan does not integrate Goal 17 (Coastal Shorelands) considerations. Goal 17 habitats will definitely be impacted by these expected changes and so these lands, currently bordering the estuary, must be integrated into the plan. This could include developing special climate change adaptation policies in key places of the estuary. It could also include considerations on how such changes will impact restoration activities, listed species, and other factors on coastal shore-lands.
5. Part VI - Management Units: Overall detail on natural resource values in the Management Unit section is vague and needs to be substantially improved. We recommend map layers for each MU contain a minimum of the following layers depicted in the YEMP:
 - ○ Habitats (eelgrass, shellfish beds, fish spawning/nursery areas)
 - ○ Habitat types - e.g. tidal marsh
 - ○ Waterfowl areas
 - ○ There is no mention of other important bird species or species groups (besides "waterfowl"). There should be reference to important seabird and shorebird roosting, nesting, staging areas. Each MU should include a list of known federal and state listed species (ESA threatened or Endangered) and ODFW Nearshore strategy species² (including other taxa as well in addition to birds - fish, mammals, invertebrates, plants/algae, etc.) known to occur at these sites.

Some of the map layers described above are currently contained within the YEMP mapping tool so it shouldn't be difficult to update the maps in the plan though developing avian maps out will take some time.

6. Management Unit 4 contains "major shellfish beds" yet the area is periodically dredged for maintenance of the channel and turning basin. We recommend that the boundaries of this MU be reconsidered to exclude the important shellfish beds as part of the regularly dredged area.
7. The Sally's Bend should be removed from consideration as a "Future Development Site" (see pgs. 135-137 of plan) because of the site's high ecological value supporting high densities of many bird taxa, significant eelgrass beds (Lamerson et al 2011 - full citation in footnote below) and as a key nursery ground for 10 rockfish species important for commercial and recreational fisheries³.
8. Appendix C. Goal Exception for Poole Slough aquaculture development should be removed from the plan. This exception was included in the original 1982 plan and much has changed then so this proposal is now antiquated. If there is renewed consideration for development in Poole Slough the plan would need to include a new section that details a full mitigation plan on how any development in this region and resulting negative environmental impacts would be compensated for. The current estimate is that 5 acres of tidal marsh would be lost to dredging and fill activities (see pg. 161 of plan).
9. We appreciate the compilation list of Restoration and Mitigation Sites (Appendix E). We recommend the list be prioritized for restoration and criteria for developing the priorities should be listed. Emphasis for restoration should be placed on sites that will have the biggest natural resource gain for minimum expense. We recommend including corresponding map(s) displaying these restoration and mitigation sites in Appendix E. For the Tier 2 phase, there should be a fully fleshed out restoration plan for the entire estuary that includes: timeline, process, goals, objectives, priority list of sites (from this current plan), implementation plan.
0. There should be consideration of designation for Boone and Nute Slough as a natural MU. A big target should be restoring tidal circulation.
 1. Flesher Sough: Improve tidal circulation with upsized culvert and remove barrier, increase LMZ area by approximately 2 acres.
 2. The YEMP should include information about the recent funding commitment by OWEB for the Yaquina and Alsea Focused Investment Partnership (FIP). The efforts will be targeting project types (e.g. tidal marsh restoration) in areas within existing tidal range, protecting what little remains of spruce and shrub scrub forested wetland and restoring this habitat type (only about 6% of original tidal swamp habit remains in with estuary). The third project type is protection and restoration of current and potentially future tidal wetlands with the high and medium-high ranked Landward Migration Zones.

2 <https://oregonconservationstrategy.org/oregon-nearshore-strategy/>

3 Schwartzkopf, B.D. 2020. Function of Oregon Estuaries to Juvenile Fishes, with Focus on Juvenile Rockfishes (*Sebastes* spp.) in Yaquina Bay, Oregon. Ph.D. Dissertation, Oregon State University, pp. 204

10. Current water quality status in the water bodies that feed into the estuary must be daylighted in the plan. The Yaquina River Basin contains three USGS survey watersheds - Upper Yaquina River, Big Elk Creek and Lower Yaquina River. Each of the streams and waterbodies are on Oregon's Clean Water Act Section 303d list as impaired for one or more pollutants, temperature, dissolved oxygen bacteria and sedimentation. The public needs to be aware that what's upstream will affect conditions downstream in the estuary. This will enable informative opportunities to engage in the TMDL process.

11. A major goal of the YEMP (page 6) is to reduce conflict between the various groups that seek to use the resources of the estuary and the agencies responsible for managing those resources. "Statewide Planning Goals interact with each other to varying degrees. In particular, Goal 17 - Coastal Shorelands, outlines planning and management requirements for the lands bordering estuaries while statewide Planning Goal 16 (page 6) and all estuary management plans are to recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands; and to protect, maintain and, **where appropriate** restore the long-term environmental, economic, and social values diversity and benefits of Oregon's estuaries" (page 6).

We appreciate that YEMP recognizes that while these two Goals are immediately adjacent to each other, in Lincoln County, Goal 16 is administered through the estuary management plan whereas Goal 17 is administered through the zoning code." (page 6).

12. We hope more details can be provided on how decisions on what will be "appropriate" will be made. Moreover, previously unrecognized critical burdens for this plan will include the increasing importance of adaptive and proactive management. Emerging challenges created by sea level rise, for example, are being recognized, however, management will require more than shifting and enforcing habitat designations when the very resources of interest are threatened by outside and emerging processes. Native species everywhere, for example, increasingly threatened by invasions of nonindigenous species and their pathogens and diseases.

A PICES (**The North Pacific Marine Science Organization** ([PICES](#)), an intergovernmental science organization, was established in 1992 to promote and coordinate marine research in the North Pacific and its adjacent seas.) sponsored survey of Coos Bay and Yaquina Bay estuaries (Gillespie et al. 2010) revealed that greater than 125 estuary species that comprise 1 in 5 species of Coos Bay and Yaquina Bay are introduced and that approximately one new introduced species is discovered in Yaquina Bay each year. Among those introduced species, as examples here, the threats of the introduced green crab, *Carcinus maenus* (Berends Yamada et al. 2017) and the introduced Asian isopod parasite, *Orthione griffenis* (Chapman et al. 2021) to native species and natural resources of Yaquina Bay are in direct conflict with statewide goals 16 and 17 "to restore the long-term environmental, economic, and social values diversity and benefits of Oregon's estuaries".

13. At minimum, the MUs containing threatened marshes, native oysters, seagrass beds by introduced nonindigenous species and that are potential sources for continued nonindigenous dispersal to other estuaries and water bodies (boat launches and ballast water uptake and discharge sites, for example) should be identified. Overlays of the changing distribution of critical shellfish, seagrass and burrowing shrimp beds should be included in the YEMP goals. The Yaquina Bay populations of the native oyster, *Ostrea lurida*, in example, are genetically distinct from all other populations.

Detailed comments:

- ● Page 17 - overall management policies: Policy 1 should include language that also reflects the importance of ecological services of the estuary. Suggested language change: “Lincoln County’s estuaries represent an economic resource *and provide vital ecosystem services* of regional importance.”
- ● Page 18: Policy 4 (Dredging and/or filling) should include “no net loss of any impacted wetlands from dredging activities” rather than “adverse impacts are minimized”
- ● Page 24 and in subsequent sections: “Climate Vulnerabilities” should include a specific bullet point on how bird use/migration areas may be impacted by changes in habitat due to climate change. We propose language that would say something like: “Habitat loss due to sea level rise/inundation for thousands of resident and migratory birds species”
- ● Page 36/38: how is “not significant” defined in the Natural Management Unit and Conservation Unit definitions? We recommend a more specific definition since this term could currently be interpreted in many different ways.
- ● Page 118: In discussing MU 32, it says, “...wildlife habitat, but these resources are considered to be of minor significance.” Who is making that assessment? There needs to be justification as to how the significance of a site is being determined including what criteria are being used (here and throughout the MU section where this type of vague language is used).
- ● Part VIII - Mitigation and Restoration: Page 126: In the first paragraph a few sentences down it says “Recent research has documented the significant benefits of tidal marsh restoration...”. Please include the specific scientific citations for the research mentioned. All other references to science findings should include citation to the original source.
- ● Page 126: It should be clearly stated that adverse effects of development will be compensated for (or mitigated) by the creation, restoration or enhancement of estuarine areas **with the intention of no net loss of wetland habitat**.
- ● Part IX - Future Development Sites. We realize this section will not be updated in the near future but when it does here are some major changes that need to be made:
 - ○ This chapter is biased toward “Natural” and “Conservation” units becoming “Development” units. The updated chapter should also consider “Development” units (or parts of Development units) becoming Natural or Conservation units as well (via restoration activities). The chapters name would need to be changed to something like “Future site classification changes”
 - ○ Page 133-134: section on offshore energy is no longer valid with respect to offshore oil/gas development as there is now a permanent moratorium on oil/gas leasing in Oregon waters (SB 256 in 2020 legislative session).
 - ○ Mention that any development would need to have earthquake and tsunami risk assessment to determine if development should take place in the first place.

YEMP mapping tool -

We appreciate the development of the Yaquina Estuary Management Mapping Tool. It's a good start but it needs work.

Please consider the following recommendations:

- ● Reduce redundancy in the layers. Currently many of the sets of “maps” have the same layers included.
- ● A metadata description of the data sets included in the mapping tool would be ideal to help the user understand important details of the maps and their source. For example, it is unclear what the difference between the “Aquatic vascular veg - eelgrass bed” and the “eelgrass extent, PMEP” layers indicate in terms of eelgrass.
- ● The mapping tool is completely lacking in avian data layers yet important “waterfowl” areas are mentioned in the MU section. The following data sources should be reviewed and utilized to create map layers or inventory lists for avian species. As mentioned previously, ESA listed and species of conservation concern should be highlighted.:

We have reviewed and support the testimony for the fact that special policies are needed in McCaffery and Poole Management Units 18 & 19 . We fully endorse those recommendations submitted into the process. The Wetlands Conservancy has been committed to restoring and conserve those areas and ODFW has worked with them on a mitigation effort at on the Poole Slough site.

We also fully support the concerns and recommendations raised about Sally’s Bend MU area as well.

Johnson Slough, MU 20 has been identified as a future aquaculture development site. We could not endorse that direction. Reference areas are incredibly valuable and this site would be called intact and a natural area and should not allow aquaculture.

- ODFW has recent multi-year avian data for Yaquina Bay that would likely be very useful for informing management and land-use decisions. Contact J. Matthew Lawonn, ODFW Avian Biologist/Avian Predation Coordinator (Matthew.J.LAWONN@odfw.oregon.gov; 503-731-8624) for access to the dataset. Preliminary results for Yaquina Bay indicate abundances for some bird species have declined substantially in the past 40 years⁴.

4 Based on comparison of the recent ODFW data (Lawonn, unpublished) with data from older data sets including: 1) Bayer, R. D. 1980. Birds Feeding on Herring Eggs at the Yaquina Estuary, Oregon. The Condor 82:193; 2) Bayer, R. D. 1983. Seasonal Occurrences of Ten Waterbird Species at Yaquina Estuary, Oregon.

- ○ USFWS has conducted Pacific Brant surveys in the Yaquina Estuary for years. Please contact Shawn Stephensen (Shawn_Stephensen@fws.gov; 541- 867-4550) Wildlife Biologist at the Oregon Coast National Wildlife Refug Complex for more information and to request data.
- ○ There are over 20 eBird hotspots in the Yaquina Estuary containing a wealth of

bird checklists that could be mined to develop preliminary species inventories for the estuary, perhaps even for individual MUs.

Thank you for the opportunity to provide feedback and recommendations on this important planning process.

Sincerely,

Joe Liebezeit
Assistant Conservation Director - Statewide Portland Audubon

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References:

Behrens Yamada, S. & A. Randall. 2017. Status of the European green crab in Oregon and Washington Estuaries in 2012. Report prepared for the Pacific Marine Fisheries Commission. Available at: https://ir.library.oregonstate.edu/concern/parent/cf95jc64g/file_sets/r207tq612.

Gillespie G, Chapman JW Therriault T 2010. PICES 2010 Rapid Assessment Survey, PICES Press 19:27-29.

Chapman JW, Li J, McGowan MF, Breitenstein RA, Appy R, Hieb KA, Piotrowski CN, Elder LE (2021) A doubled down invasion of the northeast Pacific by the Asian mud shrimp, *Upogebia major* and its coevolved bopyrid isopod parasite, *Orthione griffenis*. Aquatic Invasions 16(4): 721–749, <https://doi.org/10.3391/ai.2021.16.4.09>The Murrelet 64:78; and 3) Lamberson, J. O., M. R.

Frazier, W. G. Nelson, and P. J. Clinton. 2011. Utilization Patterns of Intertidal Habitats by Birds in Yaquina Estuary, Oregon. 83.

Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Micah Meskel, Portland Audubon

Response date: 7/25/2023, revised 8/29/2023

Thank you for your comment on the draft update to the Yaquina Bay Estuary Management Plan (June 2023). We received many, detailed comments during the public comment period between June-July 2023 and due to the length and quantity, it is not possible to respond to every single comment/point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, the recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

1. **There should be a full range of natural resource information included in the YEMP so the public can make informed decisions in making recommendations to improve the plan. For example, the web mapping tool does not contain information on key taxa...**

Response: A request for data was issued among the Advisory Group members, which Portland Audubon fielded a representative, over the past 18 months. If such data were provided it would have been incorporated into the map inventory. The map inventory and the DRAFT Plan includes extensive habitat data from ODFW's CMECS dataset among others. The Project Team will reach out to the avian data contacts provided by the letter writer, but due to time constraints, inclusion of avian data may need to be completed by Lincoln County Planning Department Staff for eventual inclusion into the Map Inventory.

2. **There needs to be a set date on periodic reviews of the plan...**

Response: The draft update includes a new plan part that provides a description of the plan amendment process and general policy direction on the issues and situations that may warrant evaluation for amendments or updates. Given that local resources for future plan updates are unknown, policy that prescribes mandatory deadlines for plan updates is not recommended.

As described in the plan, the plan amendment process is set by state statute, and includes mandatory notices and multiple public hearings, among other due process requirements. Due to the rigidity and relative complexity of this process, creating a prescribed process or mandatory triggers for ongoing adaptation of relevant plan provisions is not a practicable approach.

3. **The county must commit to a Tier 2 update and this commitment should be described specifically within the YEMP. ...We understand that it will require additional funding to**

complete a Tier 2 planning effort therefore there should be a funding plan included in the YEMP (or as a stand-alone document) that lays out a Tier 2 budget, potential funding sources and a strategy to obtain needed funds.

Response: The Needs and Gaps Assessment designated three of 15 identified modernization tasks as "Tier 2", meaning that these three tasks were deemed to be beyond the scope of the current update process. At present, there are no identified sources of funding that would allow the local governments (Newport, Toledo and Lincoln County) to commit to specific timelines to undertake these tasks.

It should be noted that the three Tier 2 tasks affect only two of the current ten plan parts. The 12 Tier 1 tasks identified in the assessment have been completed, the result being that the remaining eight plan parts have been comprehensively updated and/or revised. It is not correct that the completion of the Tier 2 work identified in the assessment would constitute a more "comprehensive" or "in depth" update. To the contrary, the Tier 1 priorities were selected to ensure that the foundational components of the plan; especially the spatial elements (i.e., MU boundaries and classifications) and the plan implementation provisions, along with the overall policies, mitigation and restoration, and sub-area guidance, were all fully updated.

4. **Integrate Goal 17: We are pleased to see that the plan incorporates climate vulnerabilities and the map viewer includes Sea Level Rise and corresponding Landward Migration map scenarios. However, the plan does not integrate Goal 17 (Coastal Shorelands) considerations. Goal 17 habitats will definitely be impacted by these expected changes and so these lands, currently bordering the estuary, must be integrated into the plan. This could include developing special climate change adaptation policies in key places of the estuary. It could also include considerations on how such changes will impact restoration activities, listed species, and other factors on coastal shore-lands.**

Response: Special Policies in Management Units are utilized to support the local administration of the Plan by County or City staff. Their primary purpose is to provide additional clarity to support decision making around conditional uses for a given Management Unit's classification. These include identifying key habitats to be protected in Development Management Units or facilitating the maintenance of existing structures in Conservation or Natural Management Units. Used in this way, Special Policies are enforceable policies under NOAA's guidance. Adding new Special Policies that pertain to lands outside of the estuary would not be enforceable as these lands are outside of the regulatory extent of the estuarine boundary. As an informational tool, the purpose of such special policies are better suited by the Climate Vulnerabilities considered through the Impact Assessment process.

5. **Part VI - Management Units: Overall detail on natural resource values in the Management Unit section is vague and needs to be substantially improved. We recommend map layers for each MU contain a minimum of the following layers depicted in the YEMP: Habitats (eelgrass, shellfish beds, fish spawning/nursery areas); Habitat types - e.g. tidal marsh; Waterfowl areas; There is no mention of other important bird species or species groups (besides "waterfowl").**

Response: One of the modernization objectives listed in the Needs & Gaps Assessment is to improve the usability and accessibility of the Plan. The individual Management Unit maps were included to orient the reader. The intended audience/reader of the Plan are estuarine

landowners and planning department staff at Lincoln County and the Cities of Newport and Toledo. The inclusion of multiple extra maps would significantly increase the document size and run counter to the goal of simplifying an otherwise complex document. The data inventory was reviewed when revising each Management Unit and is visualized as the mapping inventory.

- 6. Management Unit 4 contains “major shellfish beds” yet the area is periodically dredged for maintenance of the channel and turning basin. We recommend that the boundaries of this MU be reconsidered to exclude the important shellfish beds as part of the regularly dredged area.**

Response: The navigation channel and turning basin is federally regulated and maintained by the United States Army Corps of Engineers whose authority supersedes Oregon’s Statewide Planning Goal 16 and the Yaquina Bay Estuary Management Plan.

- 7. The Sally’s Bend should be removed from consideration as a “Future Development Site”...**

Response: This issue was raised during two Town Halls and Lincoln County staff did some digging to provide the following answer. Many people have, with good cause, pointed out that it does not make sense to both protect this area with exceptional natural resources and identify it for development. However, this is merely a legacy holdover from the original EMP and has no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.

- 8. Appendix C. Goal Exception for Poole Slough aquaculture development should be removed from the plan...**

Response: Appendix C, Goal Exceptions, was not addressed as part of the current update. The Goal 16 exception that authorizes aquaculture development at Poole Slough appears largely obsolete. However, because the exception has not been evaluated as a part of this update, any initiative by the county to repeal or otherwise alter this portion of the appendices should be preceded by a complete analysis and consultation with the current property owner.

- 9. We appreciate the compilation list of Restoration and Mitigation Sites (Appendix E). We recommend the list be prioritized for restoration and criteria for developing the priorities should be listed...**

Response: The basic purpose of the YBEMP is to establish a spatial basis for the allocation of uses and development within the estuary. The function of the restoration site inventory within the plan is primarily to ensure that management units that either encompass or are adjacent to potential restoration areas are designated to accommodate restoration activity and avoid conflicts. Establishing priorities among sites or establishing policies to guide or control restoration strategies is beyond the scope and purpose of the YBEMP. Indeed, such a prioritization would not be binding on project funders or sponsors, and would therefore serve no functional purpose.

- 10. There should be consideration of designation for Boone and Nute Slough as a natural MU. A big target should be restoring tidal circulation.**

Response: Boone and Nute Slough are not within the estuary regulatory extent as the land is no longer tidally influenced. As such, it cannot be included as a Management Unit.

- 11. Flesher Sough: Improve tidal circulation with upsized culvert and remove barrier, increase LMZ area by approximately 2 acres.**

Response: These are project specific goals and are not within the purview of an estuary management plan.

- 12. The YEMP should include information about the recent funding commitment by OWEB for the Yaquina and Alsea Focused Investment Partnership (FIP).**

Response: The DRAFT Plan is a regulatory document that, if adopted into the County's Comprehensive Plan will be in effect until updated and replaced. The OWEB FIP funding cycle culminates within six years and as such is not at the same timescale as the Plan. Restoration outcomes of the FIP are anticipated to lead to specific future updates to the Plan as areas currently not within the estuary regulatory extent may be newly tidally (re)connected. Lastly, the FIP application included multiple planned restoration sites which were incorporated into the potential restoration sites list.

- 13. Current water quality status in the water bodies that feed into the estuary must be daylighted in the plan.**

Response: River and stream water quality is regulated by DEQ and upstream land use practices and activities are outside of the regulatory authority of the estuary management plan. Estuary management plans are not developed for public outreach messaging and awareness building for upstream water quality impacts.

- 14. "Statewide Planning Goals interact with each other to varying degrees. In particular, Goal 17 - Coastal Shorelands, outlines planning and management requirements for the lands bordering estuaries while statewide Planning Goal 16 (page 6) and all estuary management plans are to recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands; and to protect, maintain and, where appropriate restore the long-term environmental, economic, and social values diversity and benefits of Oregon's estuaries" (page 6). We appreciate that YEMP recognizes that while these two Goals are immediately adjacent to each other, in Lincoln County, Goal 16 is administered through the estuary management plan whereas Goal 17 is administered through the zoning code." (page 6). We hope more details can be provided on how decisions on what will be "appropriate" will be made.**

Response: The quote is from the opening sentence in Goal 16. It is a visionary statement and there is no cause to define it.

- 15. A PICES (The North Pacific Marine Science Organization ([PICES](#)), an intergovernmental science organization, was established in 1992 to promote and coordinate marine research in the North Pacific and its adjacent seas.) sponsored survey of Coos Bay and Yaquina Bay estuaries (Gillespie et al. 2010) revealed that greater than 125 estuary species that comprise 1 in 5 species of Coos Bay and Yaquina Bay are introduced and that approximately one new introduced species is discovered in Yaquina Bay each year. At minimum, the MUs containing threatened marshes, native oysters, seagrass beds by introduced nonindigenous species and that are potential sources for continued nonindigenous**

dispersal to other estuaries and water bodies (boat launches and ballast water uptake and discharge sites, for example) should be identified. Overlays of the changing distribution of critical shellfish, seagrass and burrowing shrimp beds should be included in the YEMP goals. The Yaquina Bay populations of the native oyster, *Ostrea lurida*, in example, are genetically distinct from all other populations.

Response: A request for data was issued among the Advisory Group members, which Portland Audubon fielded a representative, over the past 18 months. If such data were provided it would have been incorporated into the map inventory. The map inventory and the DRAFT Plan includes extensive habitat data from ODFW's CMECS dataset among others. Please share data with the Project Team and/or Lincoln County Planning Department Staff for eventual inclusion into the Map Inventory.

- 16. Page 17 - overall management policies: Policy 1 should include language that also reflects the importance of ecological services of the estuary. Suggested language change: "Lincoln County's estuaries represent an economic resource and provide vital ecosystem services of regional importance."**

Response: This additional language has been accepted by the Steering Committee and the change has been made.

- 17. Page 18: Policy 4 (Dredging and/or filling) should include "no net loss of any impacted wetlands from dredging activities" rather than "adverse impacts are minimized"**

Response: This represents a change to the definition of mitigation in the Plan. Several commenters have advocated for incorporating the definition of "mitigation" employed by state and federal regulatory authorities, rather than the narrower, more specific definition used in the Statewide Planning Goals. These alternative definitions incorporate avoidance and reduction of adverse impacts (followed by compensation) in a hierarchy of preferences. Commenters have stated that because the current goal definition of mitigation is limited to compensation for impacts of dredge or fill in tidal wetlands through resource replacement, this means that local permit decisions are not required to consider avoidance or reduction of impacts. This represents a misunderstanding of Goal 16 implementation requirements.

Implementation requirement 2 of Goal 16 requires a showing, for all estuarine alterations, that "adverse impacts are minimized". Correspondingly, implementation requirement 1 directs required impact assessments to include a showing of "methods which could be employed to avoid or minimize adverse impacts". These provisions are incorporated into implementing land use regulations and represent the functional equivalent of the more expansive state and federal definition of "mitigation", but expressed in different terminology.

To avoid confusion and ensure alignment with Goal 16 and Oregon's estuarine resource replacement policy (ORS 196.830), retaining the current Statewide Planning Goals definition of mitigation is recommended.

- 18. Page 24 and in subsequent sections: "Climate Vulnerabilities" should include a specific bullet point on how bird use/migration areas may be impacted by changes in habitat due to climate change. We propose language that would say something like: "Habitat loss due to sea level rise/inundation for thousands of resident and migratory birds species"**

Response: The Project Team is open to the inclusion of this additional Climate Vulnerability. As currently written “habitat loss” is too vague and specific habitats would need to be described. An ODFW avian biologist was consulted on creating a new climate vulnerability specific to ESA listed or species of concern waterfowl. The following two climate vulnerabilities were drafted and have been included in the following sub-areas: Sally’s Bend, Yaquina, Oysterville, Boone’s.

- i. *Increased use of productive estuary habitats by marine birds during periods of low food abundance in the ocean, which are associated with marine heat waves and climate-driven changes in ocean processes*
- ii. *Increased use of Yaquina Bay habitats by migratory birds as other regional habitats become unsuitable for climate-related reasons (i.e. climate-related shifts in breeding, migration, and overwintering ranges)*

19. Page 36/38: how is “not significant” defined in the Natural Management Unit and Conservation Unit definitions? We recommend a more specific definition since this term could currently be interpreted in many different ways.

Response: This language from Plan Part IV - Classification System is sourced directly from Goal 16. The term “not significant” is used to describe the Resource Capability Test utilized by jurisdiction staff to perform the discretionary review of applications for conditional uses.

20. Page 118: In discussing MU 32, it says, “...wildlife habitat, but these resources are considered to be of minor significance.” Who is making that assessment? There needs to be justification as to how the significance of a site is being determined including what criteria are being used (here and throughout the MU section where this type of vague language is used).

Response: The assessment was performed through reviewing the data/map inventory. The purpose of the MU descriptions is to provide a summary of the information that is relevant to the establishment of MU boundaries and classifications in accordance with Goal 16 requirements. In an effort to help simplify an otherwise complex document, the brevity is intentional. The MU descriptions are not intended to provide a complete recitation of all known resource information for the unit. Because each description is a summary of information included in the plan inventory, it is not intended to be used as the primary source of evidentiary information for establishing the record for an individual land use decision. That is the purpose of the plan inventory, and a principal reason that the plan inventory is adopted as a part of the plan. It should also be noted that permit applicants and other parties to a land use proceeding may introduce and utilize as evidence any information deemed relevant to a decision, whether or not such information is in the plan inventory.

21. Part VII - Mitigation and Restoration: Page 126: In the first paragraph a few sentences down it says “Recent research has documented the significant benefits of tidal marsh restoration...”. Please include the specific scientific citations for the research mentioned. All other references to science findings should include citation to the original source.

Response: Additional edits by DLCD staff have made this request no longer applicable.

22. **Part IX - Future Development Sites.** We realize this section will not be updated in the near future but when it does here are some major changes that need to be made:

- This chapter is biased toward “Natural” and “Conservation” units becoming “Development” units. The updated chapter should also consider “Development” units (or parts of Development units) becoming Natural or Conservation units as well (via restoration activities). The chapters name would need to be changed to something like “Future site classification changes”
- Page 133-134: section on offshore energy is no longer valid with respect to offshore oil/gas development as there is now a permanent moratorium on oil/gas leasing in Oregon waters (SB 256 in 2020 legislative session).
- Mention that any development would need to have earthquake and tsunami risk assessment to determine if development should take place in the first place.

Response: This comment will be passed along to the local jurisdictions for consideration during the update of Tier 2 recommendations. As stated above, the original text in Plan Part IX has been removed due to being obsolete.

23. **YEMP mapping tool - Please consider the following recommendations: Reduce redundancy in the layers. Currently many of the sets of “maps” have the same layers included.**

Response: The opposite perspective has been voiced by other public comments, requesting that map inventories include other datasets for direct comparisons.

- **YEMP mapping tool - A metadata description of the data sets included in the mapping tool would be ideal to help the user understand important details of the maps and their source. For example, it is unclear what the difference between the “Aquatic vascular veg - eelgrass bed” and the “eelgrass extent, PMEP” layers indicate in terms of eelgrass.**

Response: Links to websites describing highly technical map layers (i.e.: CMECS data) will be included in the Maps and on the Map Viewer. However, a new Appendix G - CMECS Data Descriptions has been created that describes all CMECS features visualized in the Map Inventory.

- **YEMP mapping tool - The mapping tool is completely lacking in avian data layers yet important “waterfowl” areas are mentioned in the MU section. The following data sources should be reviewed and utilized to create map layers or inventory lists for avian species. As mentioned previously, ESA listed and species of conservation concern should be highlighted.**

Response: A request for data was issued among the Advisory Group members, which Portland Audubon fielded a representative, over the past 18 months. If such data were provided it would have been incorporated into the map inventory. The map inventory and the DRAFT Plan includes extensive habitat data from ODFW’s CMECS dataset among others. These habitat datasets are required by Goal 16 to determine management unit classification. The Project Team will pass the information on bird habitat data sources to Lincoln County Planning Department Staff for eventual inclusion into the Map Inventory.

July 14, 2023

Ethan Brown, ethan@willamettepartnership.org
Community and Water Partner at Willamette Partnership

Dear Ethan:

Re: Comments about Yaquina Bay Estuary Management Plan (YBEMP).

Thanks to Willamette Partnership, Oregon Department of Land Conservation and Development, Lincoln County, the City of Newport, the Port of Newport, the City of Toledo, the Port of Toledo, the Steering Committee, Advisory Group, and Technical Sub-group for all the time and effort in putting this complex Plan together and giving us an opportunity to comment on it! Thanks so much for adding climate variability to the Plan!

My comments are as Conservation Director of Yaquina Birders & Naturalists, a group of Lincoln County residents interested in birds and the Lincoln Co. environment. Our roots go back to the early 1970s and staff and students at the OSU Marine Science Center. I came to Yaquina Estuary to study Great Blue Heron behavior and their environment as an OSU graduate student in late 1972, commuted between Corvallis and Newport until 1974, when I moved here and remain. My research papers about Yaquina herons and their environment are listed in the OSU Guin Library "*Yaquina Bay Bibliography*" (references at the end).

Thanks so much for your time and consideration!

Yours,

Range (Richard) Bayer, 541-265-2965, Range.Bayer@gmail.com
Conservation Director, Yaquina Birders & Naturalists
PO Box 1467, Newport, OR 97365

1) Please commit to doing Tier 2 phase of the YBEMP, especially updating resource inventory information needed to update Management Unit plans. The OSU Guin Library "*Yaquina Bay Bibliography*" is a helpful tool to find research done about Yaquina Bay, including about the Yaquina Bay Task Force cited on p. 136 of the YBEMP, who prepared the first Yaquina Estuary plan in the early 1970s. On 7/11/23, the Bibliography had 83 references just for "*eelgrass*" at Yaquina Estuary.

2) I suggest adding tsunami considerations to the YBEMP about determining the "need" for additional filling or estuary alteration in fulfilling Goal 16. My computer search did not find "*tsunami*" in the YBEMP, even though Yaquina intertidal and filled lands are in the tsunami zone (DOGAMI 2022).

Concerns about tsunamis have increased greatly since the **1982 Lincoln Co. Estuary Management Plan (termed 1982 Plan below)**, which includes all Lincoln Co. estuaries, not just the Yaquina). The Port and City of Newport wanted to build an Event Center on filled lands near the South Beach Marina and that would have been appropriate under the 1982 Plan, even though it wasn't water-dependent or water-related.

Including tsunami considerations in the YBEMP is appropriate in fulfilling DLCD's Goal 16 priorities for ranking the "*need*" for filling tidelands (DLCD [2023]: Goal 16). Filling irreplaceable estuarine resources for perceived needs or uses that are not estuarine water-dependent or water-related in a tsunami zone seems questionable.

Comments for YBEMP

Goal 16's priorities: *"The general priorities (from highest to lowest) for management and use of estuarine resources as implemented through the management unit designation and permissible use requirements listed below shall be:*

1. *Uses which maintain the integrity of the estuarine ecosystem;*
2. *Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification;*
3. *Water-related uses which do not degrade or reduce the natural estuarine resources and values;*
4. *Nondependent, nonrelated uses which do not alter, reduce or degrade estuarine resources and values."*

3) Please add a definition for Mean Low Water (MLW) to Appendix A: Definitions (p. 150-154).

Mean Higher High Water and Mean Lower Low Water are included in Appendix A, but not Mean Low Water. Mean Low Water (MLW) is used several times in the YBEMP for Descriptions of MU 1A (p. 55), MU 2 (p. 57), MU 3(p. 59), and MU 6 (p. 66). For consistency with the definitions of Mean Higher High Water and Mean Lower Low Water, how about defining Mean Low Water as: *"The average of all low waters over a 19 year period" ?*

4) I am concerned that the Part IX, Potential Development Sites: Sally's Bend "resource line" illustration/map was not available to the public to comment on before the July 14 deadline.

P. 136 of the YBEMP mentions an "illustration" of the "resource line" at Sally's Bend (*"...Several possible options to extend the landfill were explored, and after much discussion and negotiation a **compromise** was reached. State and Federal natural resource agencies established a "resource line" (see illustration beyond which filling would not be acceptable. State and Federal natural resource agencies established a "**resource line**" (see illustration beyond which filling would not be acceptable). This resources line would provide for approximately 65 acres of additional development area."*)

I could not find the "resource line" illustration/map in the YBEMP, so I emailed Ethan Brown about it on 7/2/23. He very promptly replied the same day (*"You were right to bring this question to our attention - the illustration is missing from the Plan draft on the Yaquina EMP website. I did some looking and found it though in the original 1982 Plan. The illustration is located on page 165 in Plan Part IX - Future Development Sites. That Plan Part, along with Part V, were not revised during the 2023 update. So Plan Part IX language in the Plan Draft is the same as from 1982. However, when we translated the 1982 pdf into a word document, the illustration image was left out. That was an oversight. I have attached it to this email and we will be adding it back into the Plan at the end of Plan Part IX soon."*) I sometimes have had the same problem in transferring images and text between files, so I commiserate.

5) I suggest that the Sally's Bend "resource line" illustration/map from the 1982 Plan (left Fig. 1 image) be rotated 90 degrees counterclockwise so that North is up in the updated YBEMP (right Fig. 1 image).

After viewing Ethan's attachment, I was puzzled by where the map location was. The map in the 1982 Plan is not reader-friendly because the map has no caption, isn't labeled that it is Sally's Bend, the orientation direction is not given, and West (not the customary North) is up on the page (left Fig. 1). Further, the 1982 map is also not adjacent to the text for Sally's Bend but is 3 pages (p. 163A, 164, and 165) after the text about the four other Potential Development Sites.

If there are no labels for direction, many of us readers assume that North is up on a map as we view it, unless text is printed sidewise with a map and we then turn the page sidewise and then North is up. The only text near this map is in portrait mode, not sidewise (landscape mode).

Readers experienced with the Sally's Bend area or those who know the location of Section corner of Sections 9, 10, 15, & 16 (though Township and Range are not included) can see that is the NW corner of Sally's Bend.

This change doesn't change the content of Part IX in the 1982 Plan but would make 1982's material more understandable for readers of the YBEMP.

In the full-page map in the 1982 Estuary Plan, labels are more legible. "Co. Rd. 515(516?)" corresponds to current north Yaquina Bay Road; the line with arrows labeled 2,000 ft shows scale; the northeastern corner of "Resource Line" appears to be south of the end of "___ Bay Dr." in the map known as SE Benson Place. The Sections corner for Sections 9, 10, 15, & 16 is shown like occurs at Sally's Bend.

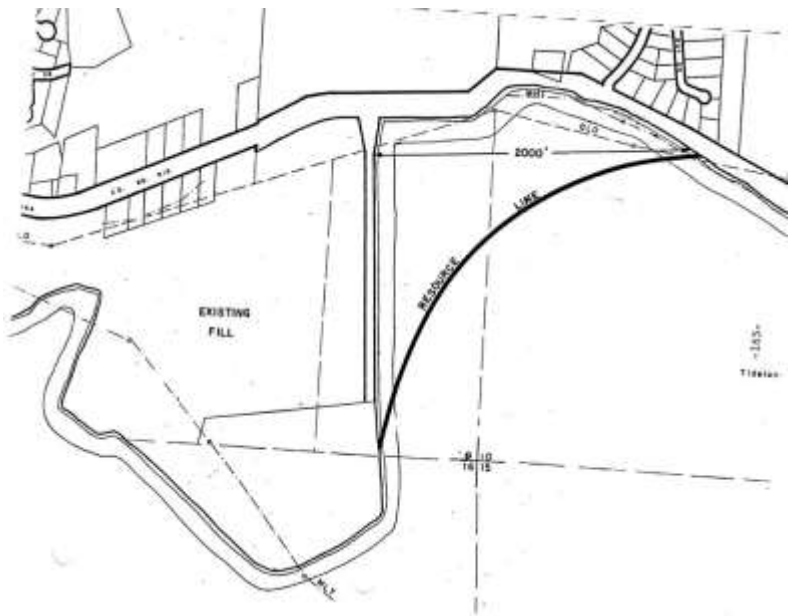
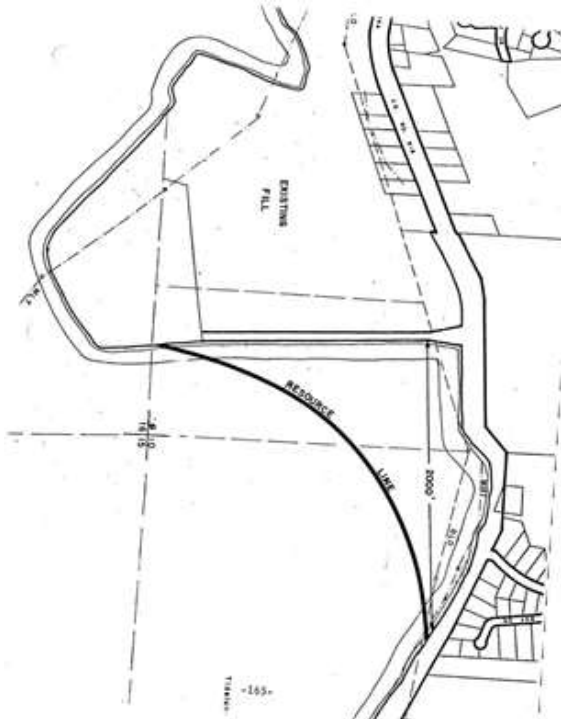
Figure 1. Orientation of "Resource Line" at NW Sally's Bend from p. 165 in 1982 Lincoln Co. Plan.

Original left image has no indication of direction in the 1982 Lincoln Co. Plan p. 165;

Right image rotated 90 degrees counterclockwise so North is up as many readers may assume.

West Up

North Up



6) I am concerned that the area within the "Resource Line" is very near or includes macrophyton (including native eelgrass) and that filling the area within the Line would cover it and also the fringing salt marsh along much of the northern boundary within the Line (Figure 2).

The left aerial image in Figure 2 shows the approximate arc-shaped Resource Line "*beyond which filling would not be acceptable*" (Comment 4; YBEMP p.136) on a Google map using some of the landmarks in Figure 1. If the Resource Line was straight, it would be easy to draw in accurately. Even so, p. 135 of the YBEMP indicates that the line positioning may be changed: "*The precise location of the resource line will have to be established at the time a development proposal is entertained. It is recognized that some ["some" in 1982 Plan p. 163] minor modification of the line may be required, depending on the type of development proposed.*"

Changing the Line would only be necessary if proposed filling or development was beyond the Resource line--this would be breaking the compromise mentioned in my Comment 4. Some of the "*State and Federal natural resource agencies*" for the 1969 compromise are given in USFWS (1968, including comment letters at end).

Comments for YBEMP

The green areas in Figure 2 (left) beyond the Resource Line suggests the presence of aquatic algae or eelgrass, but aerial color infrared photos and ground surveys are needed to confirm this. Comparing the left image with the right from the Oregon Conservation Strategy in ODFW (2016a) indicates that non-native eelgrass (*Z. japonica*) is high in the intertidal and may be within the Resource Line, and that native eelgrass and benthic macroalgae are near the Resource Line. An excellent map for native and non-native eelgrass in this area is in Young et al. (2015:Fig. 4) with similar results to the ODFW map.

Figure 2. Proximity of "Resource Line" at NW Sally's Bend to macrophyton and fringing salt marsh.

Left: Aerial 7/8/23 Google Map of NW Sally's Area with "Resource Line" hand-drawn to approximate location in 1982 Plan by using NE line reference end-point below SE Benson Place and SW line end-point between the two east-west lines/roads in both maps (<https://tinyurl.com/22pxrw5d>).

Right: Part of Legend and part of lower Yaquina Estuary vegetation in the Oregon Conservation Strategy in ODFW (2016a).

North Up

North Up



Figure 3. Left. USFWS (1968:19, Fig. 3) aerial photo and about the effects of filling the western side of Sally's Bend after 1965 adjacent to the western edge of what remains of Sallys Bend that the LNG tank was later constructed near the southern end of the fill on the white dredge spoils. This photo is undated but USFWS (1968:frontispiece) aerial photo is dated 1965 and does not show this area of fill. Their Plate II also indicates that this fill covered eelgrass.

Right. Google Earth image of 7/25/19 looking Northeast towards Sallys Bend over the southern tip of the fill shown in left image that created the area where the NW Natural Gas LNG Tank was installed. In this view, the blue LNG tank appears flattened because of tilting the image to get the same view as left image.

Northeast Up



Figure 3. This tideland fill in Sallys Bend destroyed shellfish beds and altered current patterns in this area. Material eroded from the area covered stands of eelgrass and shellfish beds adjacent to the fill.

7) Possible reason for the arc-shaped "Resource Line" and Yaquina Bay tideland ownership.

After trying to hand-draw the arc-shaped "*Resource Line*" on maps with aquatic vegetation, I wondered why the line is shaped like that. Then I recalled ODSL (1973, 1974) and that the "*Resource Line*" could be shaped like that to approximate the Mean Low Water line (1.54 ft above MLLW in ODSL 1973) as shown in Figure 4. This is consistent with more recent bathymetry shown in Figure 5. This would protect native eelgrass that grows primarily below Mean Low Water (right image in Figure 2 above, Bayer 1979). ODSL (1973, 1974) also claimed State of Oregon ownership of intertidal lands below Mean Low Water. Ownership of Yaquina tidelands is a lengthy issue that went before the Oregon Supreme Court in 1912. In working on the YBEMP, I discovered that it also went before the Oregon Court of Appeals in 1979 (*G. R. Kirk v. Port of Newport* in the References). Discussion of this is beyond the scope here.

Figure 4. Map and legend of Sally's Bend showing "Tideland between elevations of Mean Low Water and Mean High Water" in ODSL (1973).

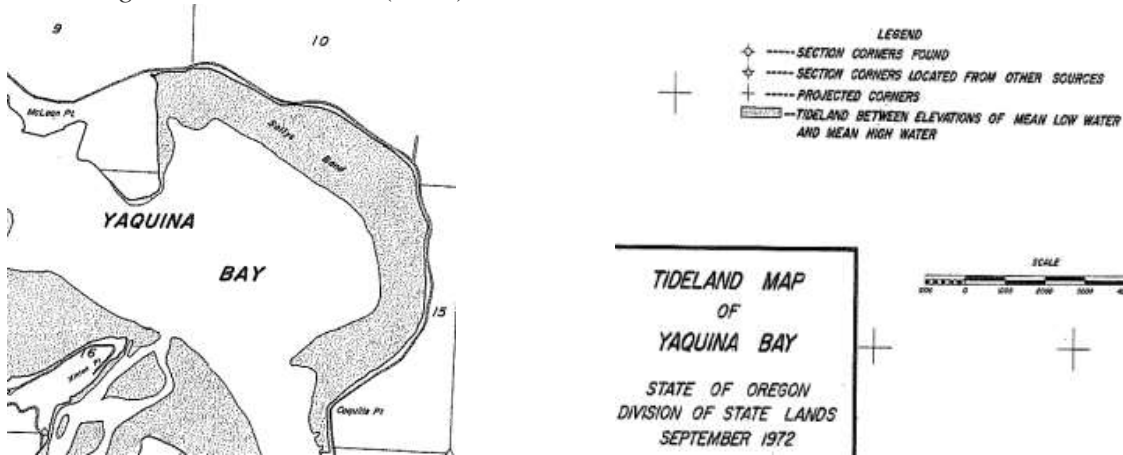
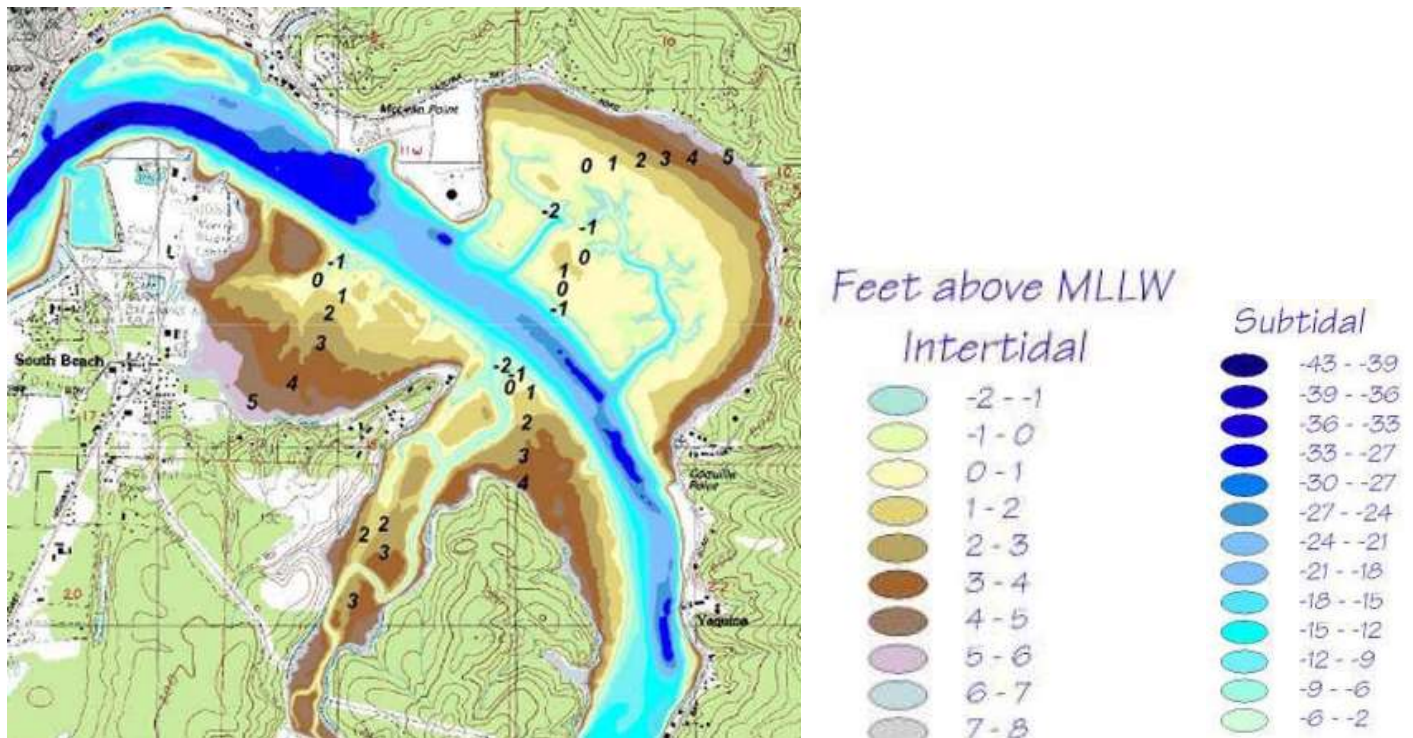


Figure 5. Portion of Dewitt (2014) image and portion of Legend indicating intertidal elevation in feet relative to Mean Lower Low Water (MLLW).



8) I suggest changing the following 3 uses of "sane" in the 2023 YBEMP back to "some" as given in the 1982 Lincoln Co. Estuary Plan.

Part IX section for Sally's Bend that was not updated from the 1982 plan.

2023 YBEMP p. 135: *In light of probable future needs, filling of the entire area within the resource line seems of dubious merit. The land area created would not have direct access to navigable water. Valuable resource area would be lost and the resultant area seems more likely that some combination of fill, dredging and breakwater construction within the resource line would provide a more beneficial development scenario, creating some additional large vessel moorage area and sane ["some" in 1982 p. 163] additional back-up area with immediate water access.*

Comments for YBEMP

*The precise location of the resource line will have to be established at the time a development proposal is entertained. It is recognized that **sane** ["some" in 1982 p. 163] minor modification of the line may be required, depending on the type of development proposed. The concept behind the establishment of the original resource line (i.e. to re-establish the original flushing and circulation characteristics of Sally's Bend) should be adhered to in finalizing the line and designing any development. It should be emphasized that the intent of this plan is to provide for development within the resource line only upon a clear demonstration of need, and that no further development into Sally's Bend is to be permitted.*

After finding these uses of "sane" replacing "some," I did a computer search of the whole 2023 YBEMP PDF and found one more use of "sane" to consider changing back to "some," as in 1982:

Part VIII. YBEMP p. 135: "*Despite **sane** ["some" in 1982 p. 162] existing conflicts, sizeable areas of Yaquina Bay are known to be suitable for aquaculture of various fish and shellfish species. Additional areas may be suitable for culturing of other plant and animal species in the future.*"

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<https://www.oregon.gov/lcd/op/pages/goal-16.aspx>
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<https://guin.library.oregonstate.edu/yaquina-bay-bibliography>
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(This has also been cited as Bureau of Sport Fisheries and Wildlife, United. 1968. Preliminary Survey of Fish and Wildlife in Relation to the Ecological and Biological Aspects of Yaquina Bay, Oregon. Portland, Ore. Fish and Wildlife Service.)
<https://ir.library.oregonstate.edu/concern/defaults/mw22v631f>
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Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Range Bayer, Yaquina Birders & Naturalists

Response date: 7/26/2023, revised on 8/29/2023

Thank you for your comment on the draft Yaquina Bay Estuary Management Plan . We received many, detailed comments during the public comments of June-July 2023, and due to the length and quantity, it is not possible to respond to each individual point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

- 1. Please commit to doing Tier 2 phase of the YBEMP, especially updating resource inventory information needed to update Management Unit plans.**

Response: The Needs and Gaps Assessment designated three of 15 identified modernization tasks as "Tier 2", meaning that these three tasks were deemed to be beyond the scope of the current update process. At present, there are no identified sources of funding that would allow the local governments (Newport, Toledo and Lincoln County) to commit to specific timelines to undertake these tasks. It should be noted that the three Tier 2 tasks affect only two of the current ten plan parts. The 12 Tier 1 tasks identified in the assessment have been completed, the result being that the remaining eight plan parts have been comprehensively updated and/or revised. It is not correct that the completion of the Tier 2 work identified in the assessment would constitute a more "comprehensive" or "in depth" update. To the contrary, the Tier 1 priorities were selected to ensure that the foundational components of the plan; especially the spatial elements (i.e., MU boundaries and classifications) and the plan implementation provisions, along with the overall policies, mitigation and restoration, and sub-area guidance, were all fully updated. Lastly, the data inventory was produced through an 18+ month window soliciting spatial data from the Steering Committee, Advisory Group, and Technical Sub-Group.

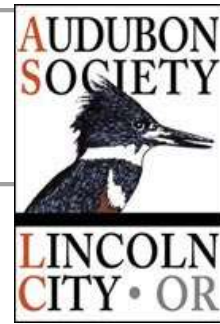
- 2. I suggest adding tsunami considerations to the YBEMP about determining the "need" for additional filling or estuary alteration in fulfilling Goal 16.**

Response: The Tsunami hazards spatial data was incorporated into the data Inventory and is visualized as Map #23 Tsunami.

- 3. Please add a definition for Mean Low Water (MLW) to Appendix A: Definitions (p. 150-154). Mean Higher High Water and Mean Lower Low Water are included in Appendix A, but not Mean Low Water. Mean Low Water (MLW) is used several times in the YBEMP for Descriptions of MU 1A (p. 55), MU 2 (p. 57), MU 3(p. 59), and MU 6 (p. 66). For consistency with the definitions of Mean Higher High Water and Mean Lower Low Water, how about defining Mean Low Water as: "The average of all low waters over a 19 year period" ?**
Response: Thank you for catching that oversight. A definition for MLW will be provided by state agencies for inclusion into Appendix A..
- 4. I am concerned that the Part IX, Potential Development Sites: Sally's Bend "resource line" illustration/map was not available to the public to comment on before the July 14 deadline.**
Response: Thank you for catching that oversight. The text in question for Plan Part IX has been removed from the Plan and so the changes described here are no longer applicable.
- 5. I am concerned that the area within the "Resource Line" is very near or includes macrophyton (including native eelgrass) and that filling the area within the Line would cover it and also the fringing salt marsh along much of the northern boundary within the Line (Figure 2).**
Response: Plan Part IX - Future Development Sites was not updated. Additionally, the text in question for Plan Part IX has been removed from the Plan and so the changes described here are no longer
- 6. I suggest changing the following 3 uses of "sane" in the 2023 YBEMP back to "some" as given in the 1982 Lincoln Co. Estuary Plan.**
Response: This was a mistake made by the Word document to PDF translation software utilized. The correction has been made.

Audubon Society of Lincoln City

PO Box 38 Lincoln City Oregon 97367
www.lincolncityaudubon.org



July 14, 2023

Ethan Brown
Willamette Partnership
1300 SE Stark Street, Suite 212
Portland, OR 97214

Cc: Lisa Phipps, Oregon Coastal Program Manager. Department of Land Conservation and Development

Dear Ethan:

The Audubon Society of Lincoln City (ASLC) is submitting this comment letter in response to the draft Yaquina Bay Estuary Management Plan (YBEMP) issued on June 16, 2023. ASLC is a chapter of the National Audubon Society. We have been serving Lincoln and Tillamook counties since 2006. As a member of the YBEMP Advisory Group, ASLC has previously submitted comments on sections of the plan. We greatly appreciate the opportunities provided by Lincoln County and Willamette Partnership for community engagement in this process.

ASLC commends the County, Department of Land Conservation and Development (DLCD), Willamette Partnership and other consultants for their work on updating the estuary management plan. We also recognize and appreciate the many hours put into the process by members of the YBEMP Steering Committee and Advisory Group. We support the contents of the update and offer recommendations for continuing to build an estuary management plan that fully integrates climate change resiliency.

There are several elements of the draft YBEMP that we consider to be particularly important updates, which we fully support. New language in the YBEMP on climate change vulnerability is a welcome addition to impact assessments for future development activities within the estuary. The discussion of restoration in part VII of the YBEMP and associated map of potential restoration sites incorporates the extensive research and analysis that has focused on restoration within the estuary.¹

¹ Brophy, L.S. 1999. *Final Report: Yaquina and Alsea River Basins Estuarine Wetland Site Prioritization Project (for the MidCoast Watersheds Council)*.

Brophy, L.S. 2012. *Tidal Wetlands of the Yaquina and Alsea River Estuaries, Oregon: Geographic Information Systems Layer Development and Recommendations for National Wetlands Inventory Revisions*. USGS Open-File Report 2012–1038. U.S. Dept. of the Interior, U.S. Geological Survey

Oregon Central Coast Estuary Collaborative. 2022. *Restoring Resilience in Two Estuaries (A Focused Investment Partnership Application to Oregon Watershed Enhancement Board)*.

ASLC concurs with the splitting out of eelgrass beds and other high-quality habitat from development Estuary Management Units (EMUs) 1a, 6, 31a, and 34a.

Public involvement is a required part of land use planning in Oregon. This requirement makes Oregon's land use planning program unique. Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." We appreciate the efforts of Willamette Partnership to accommodate public engagement in the update process. The public comment period on the draft YBEMP is, however, relatively short and there were delays in releasing the map viewer. We encourage the County, the Cities of Newport and Toledo to be amenable to considering substantive modifications to the draft YBEMP based on public comments during the formal public review process. This will greatly enhance the public's ability to participate in the update process.

The definition of mitigation in the draft YBEMP should be expanded. The draft YBEMP relies on the definition as stated in Goal 16 and is narrowly confined to replacing habitat functions that are lost with dredge and fill projects. The Goal 16 language should be considered the floor rather than the ceiling for defining mitigation. Restoring and/or replacing eelgrass beds has had very low success rates. Avoidance and minimization of impacts to critical habitat need to be included in the definition of mitigation within the YBEMP. We suggest the Oregon Department of Fish and Wildlife (ODFW) mitigation policy (https://www.dfw.state.or.us/habitat/mitigation_policy.asp) provides a more robust and proactive approach to mitigation that has been proven to be more effective. The ODFW mitigation policy considers the quality and uniqueness of the habitat when determining if proper mitigation must avoid, minimize, or replace the potentially impacted habitat.

Adaptive management is an intentional approach and iterative process to make decisions and adjustments in response to new information and changes in context. Adaptive management has been used for many years by scientists and resource managers.² Adaptive management has taken on new importance with the uncertainties being manifested through climate change impacts.

ASLC suggests the YBEMP incorporate a method for adaptive management. This should include steps to evaluate how well various elements of the plan are working to achieve specific management goals. It could also include triggers to re-assess or incorporate new data, say every five years, to keep the plan as current as possible. A commitment to monitoring, scheduled review, and a decision-making process are all essential components of adaptive management.

The needs and gaps assessment recognized that the scope of this initial plan update has realistic constraints imposed by budget and time. The assessment described a phased approach with essential tasks having been incorporated into Tier 1. While the climate change vulnerability assessment is a notable Tier 1 improvement in the plan, significant work is still needed. The draft YBEMP lacks any policy or decision outcomes related to what a project-level vulnerability assessment might conclude. Creating a climate-ready YBEMP should include policy or process that follows vulnerability assessment findings. We request the County commit to more fully integrating climate change resilience into the YBEMP as part of the Tier 2 tasks identified in the needs and gaps assessment. Other Tier 2 tasks that are much needed include incorporating estuarine use

² *Tompkins, E. L. and W. N. Adger. 2004. [Does adaptive management of natural resources enhance resilience to climate change?](#) Ecology and Society 9(2): 10.*

standards into the plan and updating the plan section on future development sites. At a minimum, the YBEMP should clearly state that the section on future development sites has not been updated. Identifying a target schedule for Tier 2 tasks helps put our community on a path of climate change readiness.

An estuary management plan cannot effectively manage for sea level rise and many other climate change impacts without integrating Goal 16 and Goal 17. We acknowledge that statewide policy guidance is necessary to define and implement meaningful land use planning that addresses sea level rise and other climate change impacts.

The Estuary Management Unit (EMU) descriptions should be enriched with more robust information about historic and present resources of importance. ASLC, in collaboration with other groups, helped create a template and example document titled: Recommended Management Unit Template for YBEMP Update, providing a prototype with actual examples of EMU descriptions. The value of adding more detailed information about the natural resources present in each unit cannot be understated. The management units constitute the primary information used by local jurisdictions to make site-based decisions. The management units are also used by the public, applicants, researchers, and state agencies. Having a shared source of basic information about each EMU aids in communication, restoration planning, and understanding of the estuary functions as well as land use planning.

Special policies listed in the EMU descriptions and/or sub-area descriptions should be eliminated in the draft YBEMP when a special policy is inconsistent with the management objectives for a given EMU classification. As an example, the Sally's Bend sub-area includes EMU 10 which is classified as natural and has a management objective to preserve and protect natural resources.

The narrative for the Sally's Bend sub-area includes relic text stating that some alteration of the Sally's Bend area will be required in conjunction with the maintenance and possible expansion and/or deepening of the channel and turning basin. This special policy should be eliminated as it is inconsistent with the management objective for this ecologically essential and fragile habitat.

The research reported in Lamberson et al. 2011 demonstrated that Sally's Bend, along with Idaho Flat, is extremely important to a wide variety of birds.³ Eelgrass beds are an important bird habitat based on nearly all metrics of bird use. Overall bird density was relatively high in eelgrass habitats and supported statistically greater densities of waterfowl than other habitats, with the possible exception of low marsh.

The special policy listed for Johnson Slough (EMU 20) being a site for future development for aquaculture is another example of relic language that should be removed. Johnson Slough contains high value habitat for birds and wildlife with a portion of EMU 20 being in conservation ownership.

³ Lamberson, J.O., M.R. Frazier, W.G. Nelson, P.J. Clinton. 2011. *Utilization Patterns of Intertidal Habitats by Birds in Yaquina Estuary, Oregon*. U.S. Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Western Ecology Division, Newport OR; EPA/600/R- 11/118

The stated special policy notes a goal amendment would be required for site development, which underscores the incompatibility of development within this management unit.

These examples are provided to demonstrate a systematic review of special policies for all EMUs is merited.

The original EMP, although 40 years old, was visionary and it has served to help preserve high quality habitats within Yaquina Bay. Let's be sure to make the updated YBEMP also continue to be a visionary plan that protects birds, wildlife, and their habitats as well as building climate change resiliency within our environment and our communities.

Thank you for the opportunity to participate in the update process and provide these comments on the draft plan.

Sincerely

A handwritten signature in black ink, appearing to read "Kent Doughty". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail.

Kent Doughty
ASLC Coastal Conservation Coordinator

Yaquina Bay Estuary Management Plan Update

Public Comment Response Letter

Responding to: Kent Doughty, Audubon Society of Lincoln City

Response date: 7/24/2023, revised 8/29/2023

Thank you for your comment on the draft Yaquina Bay Estuary Management Plan . We received many, detailed comments during the public comments of June-July 2023, and due to the length and quantity, it is not possible to respond to each individual point listed therein. The Project Team has done our best to provide a response to your comments, and all feedback letters will be submitted to the local jurisdictions and to DLCD.

In addition, recommendations or comments on how the EMP update process could be improved are being considered for incorporation into the EMP Guidance Document.

PROJECT TEAM RESPONSES

Comment: Provide expanded opportunity for public input.

Response: The schedule for completion and delivery of the draft plan is fixed and therefore additional time for review and comment cannot be added to the process at this point. There will be substantial additional opportunities for public input during the local government review and adoption process, which has not yet commenced. In the EMP Guidance document, drafted by the Project Team, there are additional recommendations for public engagement earlier and more often than was able to be performed in the Yaquina Bay EMP update.

Comment: Expand the plan's definition of mitigation.

Response: Several commenters have advocated for incorporating the definition of "mitigation" employed by state and federal regulatory authorities, rather than the narrower, more specific definition used in the Statewide Planning Goals. These alternative definitions incorporate avoidance and reduction of adverse impacts (followed by compensation) in a hierarchy of preferences. Commenters have stated that because the current goal definition of mitigation is limited to compensation for impacts of dredge or fill in tidal wetlands through resource replacement, this means that local permit decisions are not required to consider avoidance or reduction of impacts. This represents a misunderstanding of Goal 16 implementation requirements.

Implementation requirement 2 of Goal 16 requires a showing, for all estuarine alterations, that "adverse impacts are minimized". Correspondingly, implementation requirement 1 directs required impact assessments to include a showing of "methods which could be employed to avoid or minimize adverse impacts". These provisions are incorporated into implementing land use regulations and represent the

functional equivalent of the more expansive state and federal definition of “mitigation”, but expressed in different terminology. Local decision makers must make findings supported by substantial evidence against these criteria in reviewing proposed estuarine alterations.

To avoid confusion and ensure alignment with Goal 16 and Oregon’s estuarine resource replacement policy (ORS 196.830), retaining the current Statewide Planning Goals definition of mitigation is recommended.

Comment: Commit to time certain updates of the plan and prescribe requirements for adaptive management.

Response: The draft update includes a new plan part that provides a description of the plan amendment process and general policy direction on the issues and situations that may warrant evaluation for amendments or updates. Given that local resources for future plan updates are unknown, policy that prescribes mandatory deadlines for plan updates is not recommended.

As described in the plan, the plan amendment process is set by state statute, and includes mandatory notices and multiple public hearings, among other due process requirements. Due to the rigidity and relative complexity of this process, creating a prescribed process or mandatory triggers for ongoing adaptation of relevant plan provisions is not a practicable approach.

Comment: Commit to completion of Tier 2 work tasks at a time certain.

Response: The Needs and Gaps Assessment designated three of 15 identified modernization tasks as “Tier 2”, meaning that these three tasks were deemed to be beyond the scope of the current update process. At present, there are no identified sources of funding that would allow the local governments (Newport, Toledo and Lincoln County) to commit to specific timelines to undertake these tasks.

It should be noted that the three Tier 2 tasks affect only two of the current ten plan parts. The 12 Tier 1 tasks identified in the assessment have been completed, the result being that the remaining eight plan parts have been comprehensively updated and/or revised. It is not correct that the completion of the Tier 2 work identified in the assessment would constitute a more “comprehensive” or “in depth” update. To the contrary, the Tier 1 priorities were selected to ensure that the foundational components of the plan; especially the spatial elements (i.e., MU boundaries and classifications) and the plan implementation provisions, along with the overall policies, mitigation and restoration, and sub-area guidance, were all fully updated.

Comment: Establish decision outcome requirements for climate vulnerability assessments.

Response: Climate vulnerability has been added in the draft update as a factor to be addressed in the required impact assessment of proposed estuarine alterations. (Goal 16, implementation requirement 1). The Goal 16 impact assessment requirement is informational and does not establish any approval criteria or threshold. Other implementation requirements establish these thresholds; i.e., implementation requirement 2 for all alterations, and the requirement for consistency with the resource capabilities for certain uses. Addressing these requirements requires consideration of all

impacts, including climate vulnerabilities, identified in the impact assessment. However, practical examples illustrating the classes/types of estuarine impacts will be provided in the EMP Guidance document. The EMP Guidance document was drafted by the Project Team and will be under internal review by DLCD prior to public release. It was determined by the Steering Committee that providing examples inside of the Plan would insinuate thresholds which do not exist.

Comment: Integrate Goal 17 planning into current update.

Response: The YBEMP is currently structured to fulfill the spatial planning and implementation requirements of Goal 16; it is not directly applicable to adjacent shoreland areas. Local government land use authorities (Newport, Toledo and Lincoln County) have in place coordinated land use designations and implementing regulations for adjacent shorelands that comply with Goal 17. The scope of the current project is to modernize the YBEMP; the project scope does not extend to a review and revision of the existing city and county comprehensive plan elements that implement Goal 17, which would be a complex undertaking. As required by Goal 16, proposed revisions to the YBEMP include consideration of the adjacent upland characteristics and existing land uses. In addition, to ensure coordination with estuarine designations, general policy guidance for the planning of adjacent shorelands is provided in the Sub-Area policies.

Comment: Expand and revise Management Unit Descriptions.

Response: The comments that the Management Unit Descriptions need to be substantially revised and expanded are based principally on the assertions that (a) the revised drafts of the MU descriptions do not take into account current resource inventory information and, (b) that the MU descriptions represent the primary information used by local jurisdictions to make individual land use decisions on proposed estuarine alterations. Neither of these statements is accurate.

The new inventory information proposed for incorporation into the plan was available and informed the evaluation of each management unit. This information was considered in revising MU descriptions and in arriving at recommended MU boundaries and classifications. To the extent that errors or omissions were made in interpreting this information for purposes of the MU evaluations, the project team is open to specific input to rectify such errors or oversights.

The purpose of the MU descriptions is to provide a summary of the information that is **relevant to the establishment of MU boundaries and classifications** in accordance with Goal 16 requirements. In an effort to help simplify an otherwise complex document, the brevity is intentional. The MU descriptions are not intended to provide a complete recitation of all known resource information for the unit. Because each description is a brief summary of relevant information from the plan inventory, it is not intended to be used as the primary source of evidentiary information for establishing the record for an individual land use decision. That is the purpose of the plan inventory, and a principal reason that the plan inventory is adopted as a part of the plan. It should also be noted that permit applicants and other

parties to a land use proceeding may introduce and utilize as evidence any information deemed relevant to a decision, whether or not such information is in the plan inventory.

Comment: Remove Sally's Bend Sub Area policy 2.

Response: Sally's Bend Sub Area policy 2 is informational. It acknowledges that periodic maintenance dredging of the federally authorized navigation channel does and will continue to take place within the sub-area, which is otherwise comprised of areas classified and managed for natural resource protection. It also notes that any expansion of the channel and/or turning basin would require additional alteration of protected natural resource areas. This policy statement does not serve to approve, permit or otherwise authorize such channel expansion; it simply points out the fact that should such an expansion occur, it would, due to the location of the existing channel, adversely impact otherwise protected natural resource areas.

Comment: Remove Sally's Bend, Johnson Slough, and MU 33 from Part IX, Future Development Sites.

Response: This issue was raised during two Town Halls and Lincoln County staff did some digging to provide the following answer. Many people have, with good cause, pointed out that it does not make sense to both protect this area with exceptional natural resources and identify it for development. However, this is merely a legacy holdover from the original EMP and has no regulatory impact on the habitats and ecosystems in the management units in question. Due to Plan Part IX - Future Development Sites being wholly obsolete in being predicated on 40 year old economic development analysis and the challenges posed by its special policies in specific Natural Management Units, the Steering Committee has decided to remove the Plan Part and its special policies. In its place is a description of why it was removed and a recommendation for an updated Future Development Sites.