



2023 Rulemaking Advisory Committee

Ballast Water Program

Josh Emerson
Aug. 24, 2023
MS Teams webinar

Agenda

- Introductions/Rules of the RAC
- Review Charter
- Contents of this Rulemaking Effort
- Fiscal Impact Statement
- Discussion

DEQ Staff and RAC member Introductions

Charter – RAC Membership

Name	Title or Role	Affiliation	Interest Represented
Kate Mickelson	Executive Director	Columbia River Steamship Operators' Association	Industry
Carl Bertapelle	Marine Operations Services Manager	Portland Merchants Exchange	Industry
Ross McDonald	Director of Safety, Quality, Environment, and Security	Sause Bros.	Industry
Blake Hamalainen	Manager, Environmental Land and Water	Port of Portland	Industry
Dick Vander Schaaf	Associate Conservation Director, Oregon Coast and Marine Program	The Nature Conservancy	Environmental
Sarah Kidd	Senior Scientist and Manager of Estuary Research and Monitoring	Lower Columbia Estuary Partnership	Environmental
Catherine de Rivera	Professor, Environmental Sciences and Management	Portland State University	Academia
James Michelli	Emergency Manager, Clatsop County	U.S. Coast Guard	Federal
Art Leskowitch	Environmental Compliance Coordinator	U.S. Army Corps. of Engineers	Federal
Blaine Parker	Sturgeon Project Lead, Avian Predation and Invasive Species Coordinator	Columbia River Inter-Tribal Fish Commission	Tribal
Torey Wakeland	Ceded Lands Program Manager	Confederated Tribes of Grand Ronde	Tribal

Charter Review

- Objectives and Scope
- Roles
- DEQ Support and Website
- Committee Meetings
- Public Records and Confidentiality
- Information Exchange
- Public Involvement

Charter – Objectives and Scope

Policy objectives

Objectives are to (1) remove the sunset date on DEQ's 'exchange+ treatment' requirement in order to prevent unwitting introductions of aquatic invasive species ahead of incoming federal rules that contain the same requirement, (2) update the agency's definition of Pacific Coast Region in order to align with the definition used by California and federal regulators, and (3) correct three errata in DEQ's current ballast water rules.

Fiscal and Economic Impact

ORS 183.333 requires that DEQ ask the committee to consider the fiscal and economic impact of the proposed rules including:

- Whether the rules will have a fiscal impact, and if so, what the extent of that impact will be.
- Whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the rules' negative fiscal impact on small businesses.

Charter – DEQ Roles

DEQ Facilitator

The facilitator:

- Encourages open, candid and robust dialogue;
- Starts and ends the meetings and agenda items on time;
- Encourages innovation by listening to all ideas;
- Tries not to lose good ideas to the consensus process; and
- Recognizes when the discussion is outside the scope of the meeting and steers the discussion back to the focus of the meeting.

DEQ Staff

DEQ is committed to making the most effective use of committee member's time by:

- Establishing clear committee goals, meeting objectives and agendas;
- Giving committee members reasonable access to staff;
- Encouraging all members to take part in discussions; and
- Providing a clear description of members' roles, the committee timeline, the level of agreement expected and feedback on how members' input is used.

DEQ staff also avoids representing to the public or media the views of any other committee member or the committee as a whole.

Charter – Committee Roles

Committee Members

Advisory committee members must attend each meeting to ensure continuity throughout the process. An alternate may be assigned if needed. However, it is each committee member's responsibility to fully brief their alternate on all relevant issues and prior committee discussions in order to meet the meeting objectives and keep the project on schedule. The primary and alternate members of the committee cannot participate in the same meeting. If a member's absence is unavoidable, please notify the DEQ project manager.

The committee member:

- Prepares for and sets aside time for the meetings;
- Provides DEQ staff with copies of relevant research and documentation cited during the meeting;
- Stays focused on the specific agenda topics for each meeting;
- Comments constructively and in good faith;
- Consults regularly with constituencies to inform them on the process and gather their input;
- Treats everyone and his or her opinions with respect;
- Allows one person to speak at a time;
- Is courteous by not engaging in sidebar discussions;
- Avoids representing to the public or media the views of any other committee member or the committee as a whole.

Charter – Other Roles

Non-Committee Member Attendees

Those who attend the committee meetings but are not members of the committee are there only to observe and not to actively participate. If non-committee members are present at a meeting, DEQ may allow time during the meeting for their comments.

DEQ Support and Website

DEQ will post agenda and meeting materials on the advisory committee website at least one week in advance. DEQ administrative staff will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members. DEQ will not prepare a formal committee report.

DEQ will send draft meeting summaries to the advisory committee for review and input. Final meeting minutes will be posted to the advisory committee website and will be part of the public record.

The advisory committee charter, a full roster of the committee, meeting agendas and minutes, and background materials will all be located on the advisory committee webpage.

Charter – Review (cont.)

Committee Meetings

1. All committee meetings will be:
 - Open to the public, although the committee can choose whether the public can actively participate in committee meetings
 - Advertised on DEQ's webpage calendar two weeks before the meeting at: DEQ Event Calendar
 - Noticed by email using GovDelivery lists for rulemaking and Water Quality
 - Accessible via a call-in number or webinar
2. The committee is expected to meet one time virtually using the MS Teams platform. The meeting is expected to last for one hour.
3. Meeting materials and agenda will be posted to the advisory committee webpage

Decision Making

The committee's discussions will be used by DEQ in forming its draft rule, which will then be proposed for broader public review and comment as part of DEQ's rulemaking process.

When DEQ shares information with the group, DEQ will allow a reasonable timeframe for comments.

Charter – Review (cont.)

Public Records and Confidentiality

Committee communications and records, such as formal documents, discussion drafts, meeting summaries and exhibits are public records and are available for public inspection and copying. DEQ does not assume responsibility for protecting proprietary or confidential business information shared during committee or subcommittee meetings. However, the private documents of individual committee members generally are not considered public records if DEQ does not have copies.

Information Exchange

Committee members will provide information as much in advance as possible of the meeting at which such information is used. The members will also share all relevant information with each other to the maximum extent possible. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it.

Charter – Review (cont.)

Public Involvement

All meetings will be open to the public. The committee can choose whether to allow public input during a committee meeting. DEQ may set aside time for the public to speak.

Once the committee process is complete, DEQ will develop draft rules and conduct a public rulemaking process. That process will include a specified period during which the public can submit comments on the proposed rules. DEQ will also hold a public hearing during which any member of the public can submit written or verbal comments. Individual committee members may provide comments to DEQ on the full draft rule at this time. DEQ may modify the final proposed rules based on public comment. DEQ intends to take a final proposed rule to the EQC for consideration at its meeting.

Charter - Affirmation

- Any questions or discussion?
- Members all affirm charter?



Changes in this Rulemaking

- ‘Exchange + Treatment rule’ sunset date
- Pacific Coast Region definition
- Errata/corrections
 - Email address
 - CFR reference
 - Cholera serotype

Cholera serotype naming convention

[340-143-0050](#)

Ballast Water Management: Shipboard Ballast Water Treatment Systems

- Toxicogenic serotypes of *Vibrio cholera* are identified incorrectly in OAR 340-143-0050 as serotypes 01 and 0139.
- Correct nomenclature is serotypes O1 and O139.

CFR citation correction

340-143-0005

Definitions

- (2)(d) “Exchange” means to replace the water in a ballast tank using either flow-through exchange, empty/refill exchange, or other exchange methods described under U.S. Coast Guard rules, 33 CFR, part 151.2035.
- Correct CFR citation is 151.2005.

Email address correction

[340-143-0020](https://www.oregon.gov/DEQ/REGISTRATION/REGISTRATION-340-143-0020.aspx)

Ballast Water Management: Reporting, Management Plans and Recordkeeping

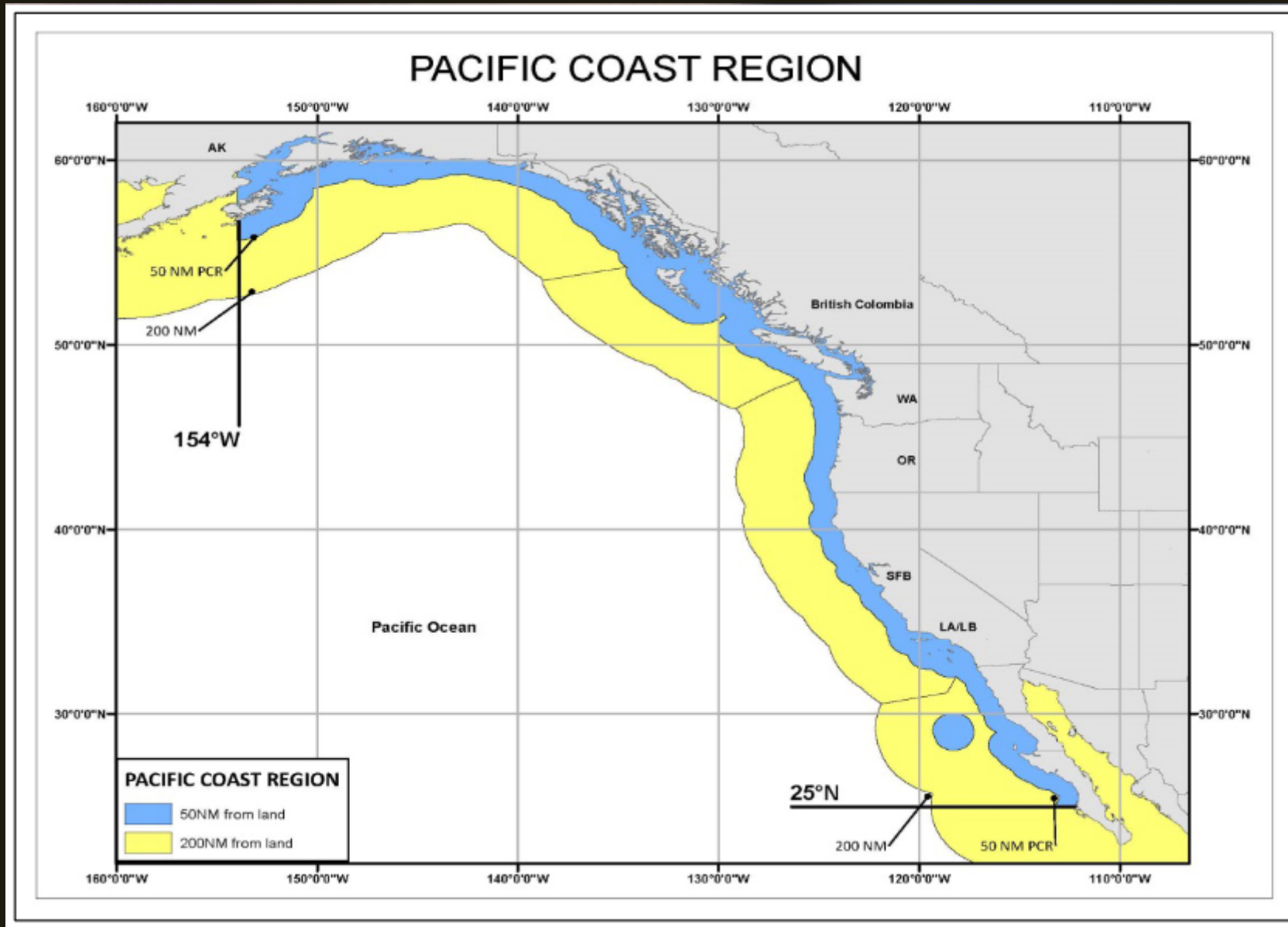
(1) A vessel owner or operator covered by OAR chapter 340, division 143 must report ballast water management information to DEQ at least 24 hours before entering waters of the state. When the vessel's voyage is less than 24 hours in total duration, the report must be submitted prior to departing the vessel's port or place of departure. The report is required whether or not the owner or operator plans to discharge ballast water into waters of the state. Compliance with these reporting requirements may be met by sending the report to DEQ via e-mail (ballast.water@deq.state.or.us) fax, or mail. Vessel owners or operators who rely on a third party to collect, forward or submit ballast water reporting forms are responsible for ensuring that DEQ receives the ballast water management information as required in this section. Electronic reporting must be submitted using methods and file formats approved by DEQ.

Pacific Coast Region definition

340-143-0005

Definitions

- (2)(i): “Pacific Coast Region” means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.
- ORS 783.635 (4)(b): to the extent practicable, the commission shall adopt rules under this subsection consistent with relevant rules adopted by the States of California and Washington.



Oregon's 'Exchange + Treatment' rule

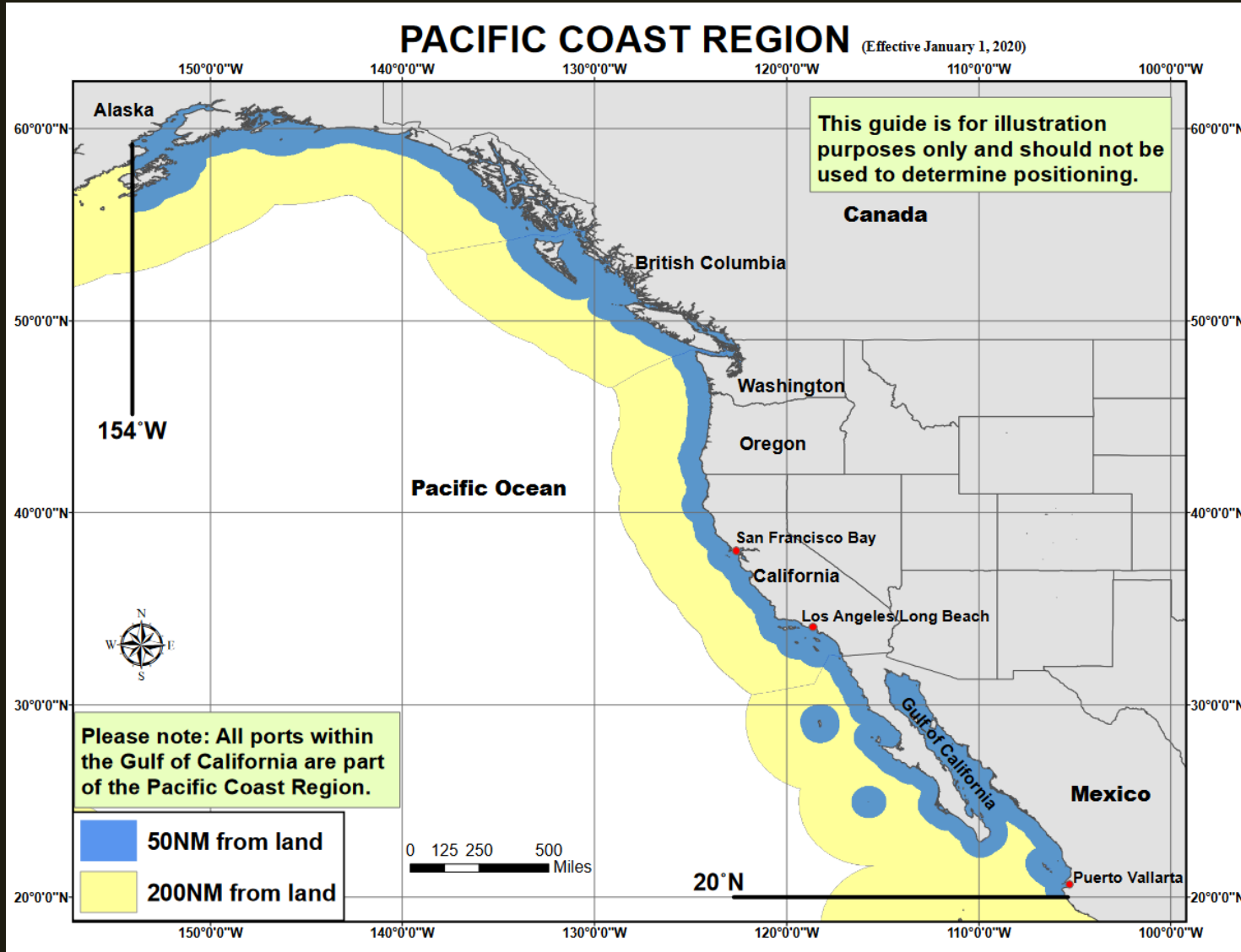


Image adapted from California State Lands Commission

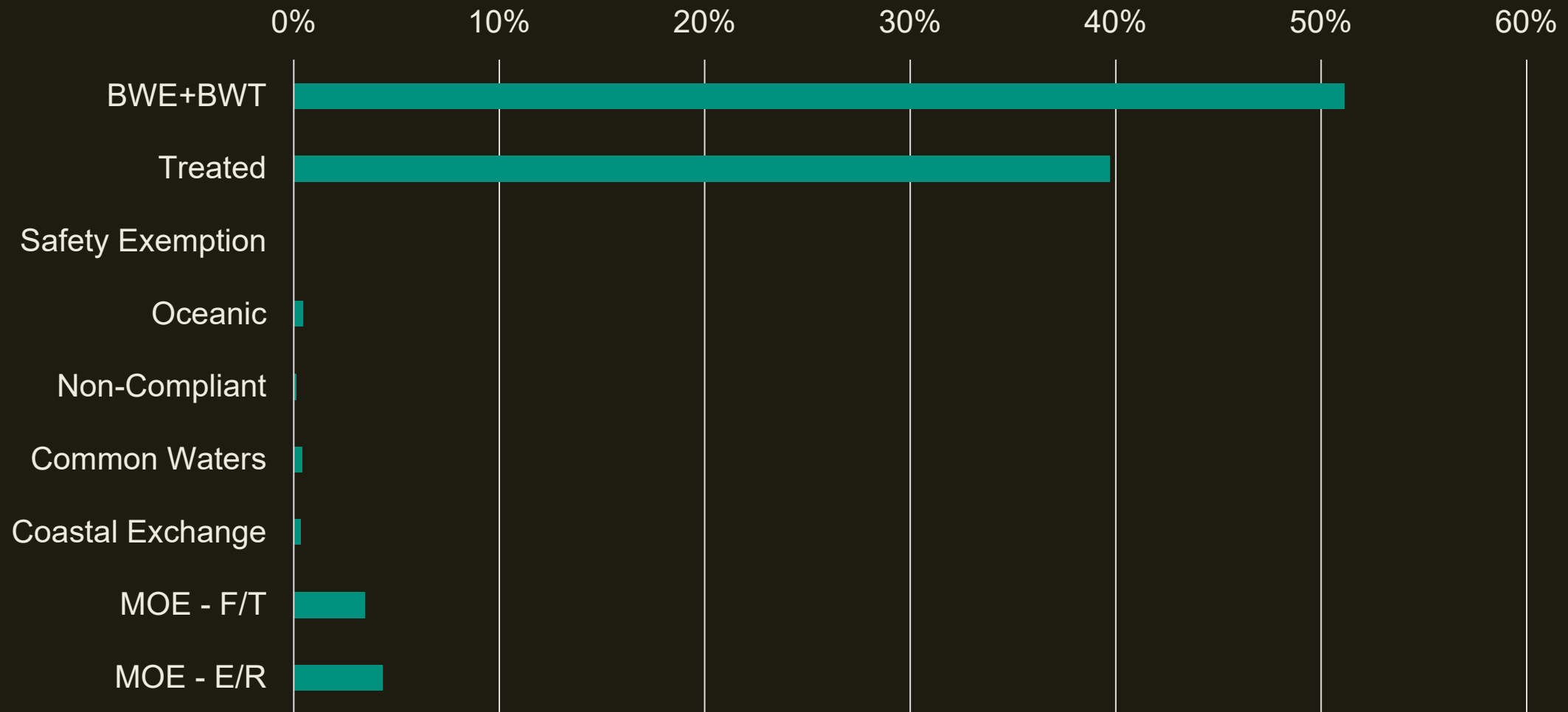
What is the Oregon's 'E+T' Rule?

[340-143-0050](#)

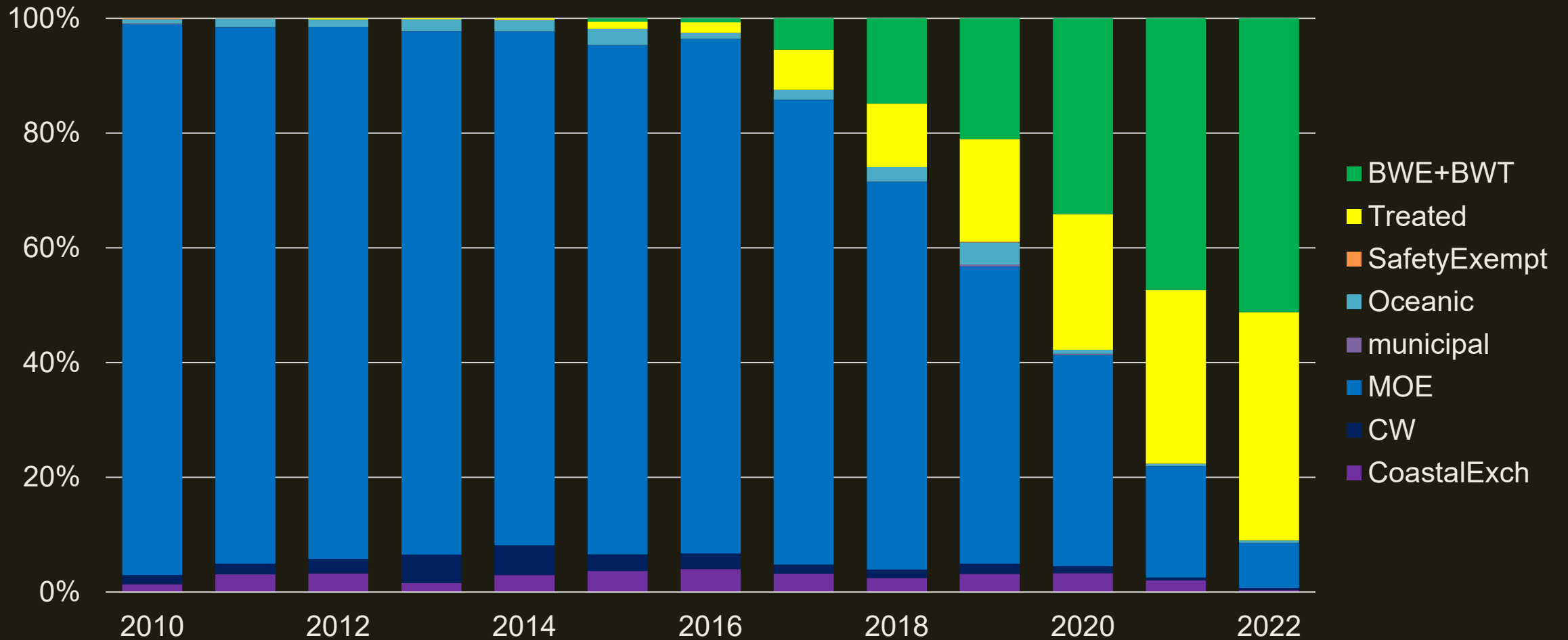
Ballast Water Management: Shipboard Ballast Water Treatment Systems

- 1) Use of shipboard ballast water treatment systems.** Ballast water treated using technology approved for shipboard use by the U.S. Coast Guard and in compliance with federal discharge standards established by the U.S. Environmental Protection Agency may be discharged to waters of the state but may also be subject to additional management practice requirements established under section (2) of this rule.
- 2) Ballast exchange plus treatment.** For vessels managing ballast water with a shipboard treatment system under federal discharge standards, the vessel operator must also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand, or under circumstances when vessel operator is unable to verify ballast salinity. This requirement applies to ballast discharge to waters of the Columbia River, Coos Bay, or Yaquina Bay. Under these circumstances, vessel operators must conduct ballast exchange or saltwater flushing practices prior to treatment, as OAR 340-143-0010(2)(b), and 340-143-0010(3) specify, respectively, resulting in salinity greater than or equal to 30 parts per thousand.

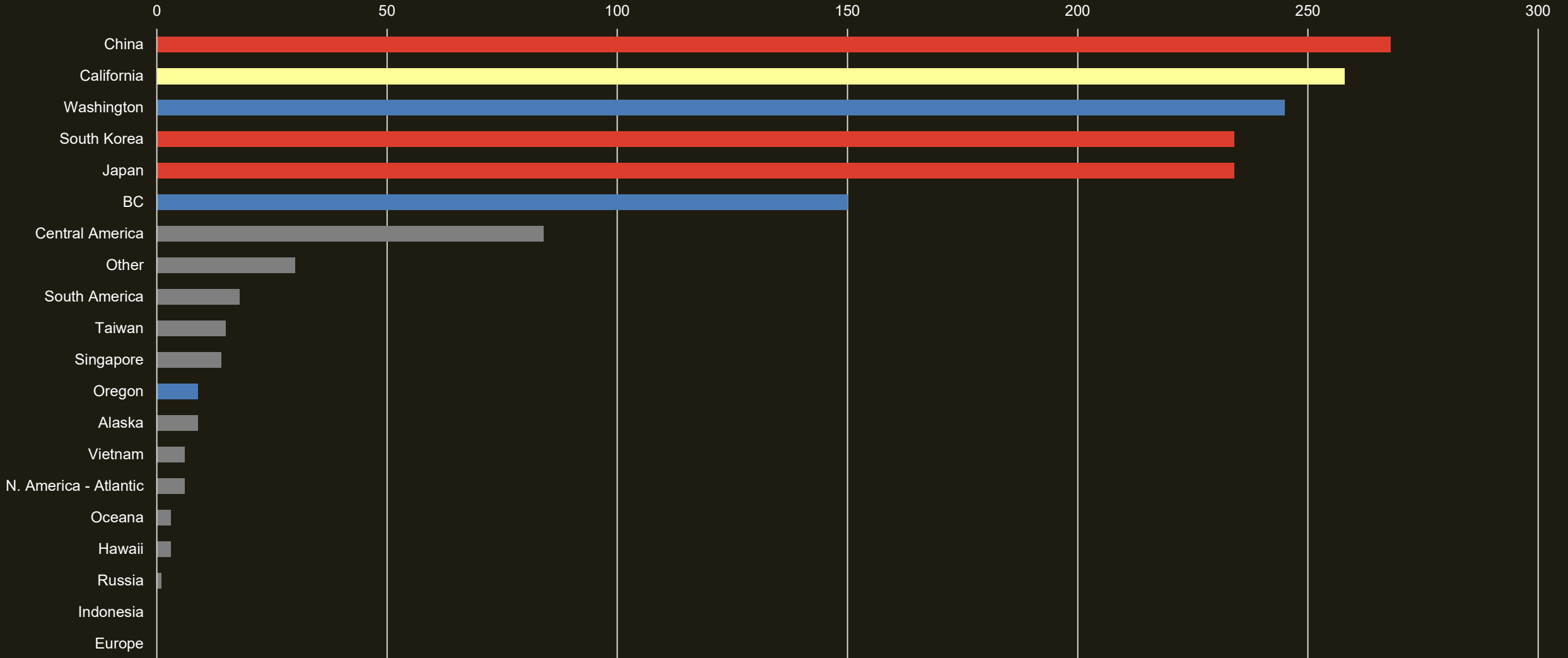
BW Management Snapshot – 2022



BW Management Trend



2022 Arrivals – Last Port



‘Exchange + Treatment’ rule sunset date

Section (2) of this rule is no longer in effect after December 19, 2023. Before this date, DEQ, in consultation with a stakeholder advisory group, will review current science on the efficacy of federal ballast water discharge standards and shipboard treatment systems, or the potential need for continuation of this rule to prevent introductions of aquatic invasive species to Oregon waters.

This sunset date was included in 2015-2016 rulemaking effort due to the lack of adequate protection at the federal level, with VIDA on the way but on an uncertain timeline.

VIDA on the horizon

- Vessel Incidental Discharge Act
- Signed into law in 2018
 - EPA: new discharge standards by end of 2020
 - USCG: implementation regulations by end of 2022
- Incorporates Oregon's 'E+T' rule, and applies to entire PCR

Great news!...however...

- VIDA is signed into law, but is not in force until 2025 at the earliest
- Oregon's rule sunset in 2023 presents a gap in prevention and protection

Recent (and local!) Science

- Ballast water regulation has lowered, but not eliminated, invasion risk (Ricciardi and MacIsaac, 2021).
- New introduction documented in Coos Bay (Andrés et al., 2023)
- High-volume shipping routes connecting environmentally similar ports pose the highest risk for species spread (Verna et al., 2018; Andrés et al., 2023)
- For trips arriving to freshwater ports, E+T is more effective than treatment alone. A similar, but smaller, positive effect for brackish receiving ports (Bradie et al., 2021).
- Exchange reduces invasion risk more than partial treatment (Bradie et al., 2022)
- Treatment less effective in shorter voyages than longer ones (Lakshmi et al., 2021)
- Cost of global AIS thought to be \$23B in 2020. (Cuthbert et al., 2021)

Key Points

- Exchange + Treatment has protected Oregon waters since 2017
- Exchange + Treatment is more protective than treatment alone
- VIDA has incorporated the 'Oregon Rule' and applied it to the Pacific Region
- VIDA has been signed into law, but will not be in force until at least 2025, likely longer
- Oregon's rule sunsets in 2023, creating a gap in protection

Rulemaking Discussion

Draft Fiscal Impact Statement

- No fees or housing costs are involved
- Fiscal and economic impacts are not anticipated for...
 - Any level of government
 - The public
 - Large businesses
 - Small businesses

Fiscal Impact Discussion

Racial Equity and Environmental Justice

- ORS 183.335(2)(a)(F) is a new requirement to identify how rule adoption will affect racial equity in Oregon.
- Environmental Justice considerations also now required for rulemaking in Oregon.

Racial Equity and EJ Discussion

Timeline for Rulemaking Implementation

- RAC meeting – August 24
- Public Notice and Comment Period – week of August 28
- Public Hearing – September 15, earliest
- EQC meeting – November 16-17

Adjourn

Thank You!

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Title VI and alternate formats

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