

**OPAC Meeting Materials**  
October 7, 2008

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**Oregon Ocean Policy Advisory Council**  
**Draft Meeting Agenda\***  
Tuesday, October 7, 2008, 9 am – 6 pm – Regular Meeting  
Port of Umpqua, 364 N. 4th Street, Reedsport

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\*Please note that this agenda is an attempt to give notice of the intended sequence of events at the meeting. Time or topics may change up to the last minute, but the Chair will try to make sure that public comment opportunities are related to discussion of major issues or decisions as indicated below.

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**Monday Evening – OPAC Social**

6 pm No Host Get Together at Bedrock's Pizzeria, 2165 Winchester Ave, Reedsport

**Tuesday – Regular OPAC Meeting**  
Port of Umpqua, Reedsport

- 9 am Welcome and Introductions – *Scott McMullen* (OPAC Chair), *Council Members*
- 9:05 am Review and Approval of Minutes of *last* OPAC Meeting (10 minutes) - *Scott McMullen* (OPAC Chair), *Council Members*  
Scott will **review** the minutes and ask for amendments and council **adoption**, as amended.
- 9:15 am Four Ports Group (10 minutes) – *Jim Relaford* (Four Ports Group)  
Mr. Jim Relaford, representing the ports and communities of Brookings, Gold Beach, Bandon, and Port Orford, will **introduce** the Group to OPAC.
- 9:25 am Marine Reserve Proposals Preview (40 minutes) – *Cristen Don & Dave Fox* (ODFW)  
Cristen and Dave will **present** a brief overview of the site proposals received by ODFW. No discussion of the proposals is intended at this time.
- 10:05 am Marine Reserve Proposal Review Process (40 minutes) – *Ed Bowles* (Office of the Governor)  
Ed will **present** an initial proposal for the review of the proposed marine reserve sites.
- 10:45 am Break (15 minutes)
- 11 am STAC Update (15 minutes) – *Jay Rassmussen* (STAC Chair)  
Jay will **update** OPAC on recent activities by the Science and Technical Advisory Committee.
- 11:15 am West Coast Governors' Agreement on Ocean Health (30 minutes) – *Jessica Hamilton* (Office of the Governor)  
Jessica will ask OPAC to **identify** one or more members to represent OPAC on working groups for the action plan. Jessica will also **distribute** copies of the State of Oregon's comments to the Minerals Management Service (MMS) on offshore wave energy rules.
- 11:45 am OPAC Procedures Document (15 minutes) – *Scott McMullen* (OPAC Chair)  
OPAC will be asked to **approve** a new version of the Operating Procedures document.

12 pm Working Lunch (60 minutes) – *TBD*

There are several dining options available to the public near the Port office.

1 pm Public Comment (60 minutes) – *Scott McMullen* (OPAC Chair)  
Members of the public who wish to provide comments to OPAC on the process OPAC will use to develop its recommendations to the Governor on sites for study as possible marine reserves are asked to sign in on a comment sheet prior to the public comment period.  
**Available time will be divided among those signed up to speak. Members of the public with lengthy or detailed comments are advised to submit them in written form, as time limits will be strictly observed.**

2 pm Marine Reserves Proposal Evaluation Process (60 minutes) – *Scott McMullen* (OPAC Chair)  
OPAC will **discuss** and **approve** a process, including meeting schedule, for evaluating the proposals for sites for study as possible marine reserves in Oregon’s Territorial Sea. Scott may request the assistance of Jane Barth in facilitating the discussion.

3 pm Break (15 minutes)

3:15 pm Marine Reserves Proposal Evaluation Process (150 minutes) – *Scott McMullen* (OPAC Chair)  
Continued: OPAC will **discuss** and **approve** a process, including meeting schedule, for evaluating the proposals for sites for study as possible marine reserves in Oregon’s Territorial Sea. Scott may request the assistance of Jane Barth in facilitating the discussion.

5:45 pm Other Issues Raised by Members; Announcements of Coming Events (15 minutes) – *Scott McMullen* (OPAC Chair)

6 pm Adjourn

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Contact Information: Jay Charland — 503 373-0050 x 253 [jay.charland@state.or.us](mailto:jay.charland@state.or.us)

**Oregon Ocean Policy Advisory Council**  
**Meeting Summary**  
**August 19, 2008**  
**City Dance Hall**  
**Garibaldi, Oregon**

**Issues Decided/Positions Taken**

- The summary of the June 2008 Ocean Policy Advisory Council (OPAC) meeting was approved as distributed. 0:06:45
- OPAC decided by consensus to *not* add Marine Protected Areas to the Oregon Marine Reserve Policy Recommendation. 1:14:00
- OPAC agreed by consensus to ask STAC to continue working on technical issues surrounding Marine Reserves. 4:16:30; 4:49:36
- OPAC agreed by vote (10-1) to approve the final draft of the Oregon Marine Reserve Policy Recommendation. 3:43:00
- OPAC agreed to have Jim Good (OPAC Vice-Chair) draft a series of questions which OPAC will pose to the public, or ask the public to address in their comments, regarding individual study sites. These questions will be edited by OPAC members through email exchanges.
- OPAC agreed to have David Allen and Paul Klarin (Co-Chairs of the TSP Working Group) draft a letter to the Governor from OPAC on Oregon's wave energy policy. 5:18:55

**Action Items**

- Laurel Hillmann (OPRD) will finalize the Oregon Marine Reserve Policy Recommendations document to reflect the changes approved by OPAC.
- Jay Charland (DLCD) will distribute the completed document and post it on the OPAC website.
- Scott McMullen (OPAC Chair) will draft a cover letter to accompany the Oregon Marine Reserve Policy Recommendations which clarifies OPAC's views on Marine Protected Areas. The letter should acknowledge marine protected areas as a part of the process, but stating that OPAC did not have the time to develop a mature policy on MPAs. 3:44:30.
- Scott McMullen (OPAC Chair) will draft a letter to STAC supporting their continued participation in the Marine Reserves process.
- Jim Good (OPAC Vice-Chair) will draft a series of questions which OPAC will pose to the public, or ask the public to address in their comments, regarding individual study sites. These questions will be edited through email exchanges by OPAC members.
- David Allen and Paul Klarin (Co-Chairs of the TSP Working Group) will draft a letter to the Governor from OPAC on Oregon's wave energy policy.

## Presentations

- *State Travel Forms* Jay Charland, DLCD, gave a short presentation during lunch on travel reimbursement forms for members of OPAC.

## Next Meetings

OPAC: October 7, 2008. Location: Port of Umpqua, Reedsport

OPAC: October 23-24, 2008. Florence, Oregon

OPAC: November 17, 2008. Lincoln City, Oregon

Territorial Sea Plan Working Group: TBD

## Attendance

Members Present (voting): **David Allen** (Public at Large); **Jim Bergeron** (Ports, Marine Transportation, Navigation); **Jack Brown** (Coastal City Official); **Paul Engelmeyer** (Statewide Conservation or Environmental Organization); **Jim Good** (Public at Large); **John Griffith** (South Coastal County Commissioner); **Robin Hartmann** (Coastal Conservation or Environmental Organization); **Scott McMullen** (North Coast Commercial Fisheries); **Brad Pettinger** (South Coast Commercial Fisheries); **Fred Sickler** (Coastal Non-Fishing Recreation); **Terry Thompson** (North Coastal County Commissioner); **Frank Warrens** (North Coast Charter, Sport or Recreational Fisheries). [12/14]

Members Present (ex officio): **Jeff Feldner** (Oregon Sea Grant); **David Fox** (Oregon Department of Fish & Wildlife; Office of the Governor); **Onno Husing** (Oregon Coastal Zone Management Association); **Paul Klarin** (Department of Land Conservation & Development); **Vicki McConnell** (Dept of Geology and Mineral Industries); **Jim Myron** (OPRD); **Greg Pettit** (Department of Environmental Quality); **Louise Solliday** (Department of State Lands); **Cathy Tortorici** (NOAA Fisheries). [9/11]

Members Absent: **Dalton Hobbs** (Dept of Agriculture); **Robert Kentta** (Oregon Coastal Indian Tribes); **Jim Pex** (South Coast Charter, Sport or Recreational Fisheries). [4]

Staff: **Jay Charland** (Department of Land Conservation & Development, OPAC Principal Staff); **Steve Shipsey** (Department of Justice, OPAC Counsel).

Public Comment speakers (with affiliation if provided): **Dean Ferguson**; **Steve Bodnar** (Coos Bay Trawlers Association); **John Holloway** (Recreational Fishing Alliance-Oregon); **Peg Reagan** (Conservation Leaders Network); **Al Barney** (Fishermen's Action Committee of Tillamook, Holiday Charters); **Richard Redman** (Fishermen's Action Committee of Tillamook); **Megan MacKay** (Pacific Marine Conservation Coalition); **Linda Buell** (Fishermen's Action Committee of Tillamook); **Susan Allan** (Our Ocean); **Ben Enticknap** (Our Ocean); **Walter Chuck** (Recreational Fishing Alliance-Oregon); **Pete Stauffer**; **Joe Ockenfels** (Siggi-G Charters); **Joe Kepell**.

**Others in Attendance:** **A.D. Gus Meyer** (Private Sector); **Jeff Folkema** (Garibaldi Marina; FACT); **Roy Hageman** (Depoe Bay Near Shore Action Team); **Laurel Hillmann** (Oregon Parks and Recreation Department); **Heather Reiff** (Oregon State University); **Len Bergstein** (Oregon Public Television); **Cristen Don** (ODFW); **Gus Gates** (Our Ocean); **Chuck Hurliman** (Tillamook County Commission); **Chuck Willer** (Coastal Range Association).

### Distributed Materials

Draft Meeting Agenda

Draft Meeting Summary, OPAC. June 30, 2008.

Draft of Oregon Marine Reserve Policy Recommendations (June 30, 2008)

Memo to OPAC from STAC

Draft Agenda, Technical Workshop on Economic Data and Analysis of Marine Reserves

DLCD Wave Energy Planning

Coarse Review Timeline for proposed marine reserve sites

### Video Index

<i>Item</i>	<i>Time Index</i>
Welcome by Val Folkema, President, Port of Garibaldi	0:00:20
Call to Order, Welcome & Introductions	0:03:20
Review and Approval of Minutes	0:06:45
Marine Protected Areas discussion	0:10:50
Public Comment, First Session	1:14:40
Discussion and Completion of Oregon Marine Reserve Policy Recommendations	1:43:00
Public Comment, Second Session	2:32:00
Discussion and Completion of Oregon Marine Reserve Policy Recommendations, <i>continued</i>	2:59:45
Report from the STAC.	3:46:30
Update on proposal process from ODFW	4:16:45
Territorial Sea Plan Working Group	5:01:30
Meeting adjourned	5:25:28

*For a copy of the video record of this meeting, please contact Jay Charland at (503) 373-0050 x253 or at [jay.charland@state.or.us](mailto:jay.charland@state.or.us).*

**Record of Decisions**  
Oregon Marine Reserve Policy Recommendations

Page 3, Line 11, Item 6. Retain language of June 30, 2008 draft. By vote, votes not tallied.

Page 3, Line 14, Item 7. Remove “except for pilot.” Agreed by consensus.

Page 3, footnotes. Align table in Footnote 4 to match the site proposal form. Agreed by consensus.

Page 3, footnotes. Change Footnote 5 as written in final draft. Agreed by consensus.

Page 3, footnotes. Approve footnotes with changes to #4 and #5. By vote, votes not tallied.

Page 4, Line 9. Change “Coastal Biodiversity” to “Biodiversity.” Change “the coastal zone” to “a particular environment, including...” Delete second sentence of “functional diversity” definition. By vote, votes not tallied.

Page 4, Line 27. Retain definition of “Conserve.” Agreed by consensus.

Page 4, Line 29. Definition of “Disturbance.” Modify as written in final draft. Decision method not recorded.

Page 4, Line 41. Definition of “Ecologically Significant.” By vote, retain definition (7-4).

Page 5, Line 18. Definition of “Evaluation Criteria.” By consensus, eliminate definition.

Page 5, Line 22. Definition of “Framework.” By consensus, remove text.

Page 5, Line 28. Definition of “Habitat.” By consensus, remove text.

Page 5, Line 32. Remove “Hard Bottom Subtidal.” Decision method not recorded.

Page 5, Line 33. “Key Types of Marine Habitat.” Make definitions consistent throughout the document. Agreed by consensus.

Page 7, Line 6. Delete “Replicate.” Decision method not recorded.

Page 7, Line 7. Definition of “Resilience.” Delete second sentence. Decision method not recorded.

Page 7, Line 43. Definition of “User.” Change “shoreline” to “intertidal.” Agreed by consensus.

Page 7, Line 34. Definition of “Species.” As written in final document. Decision method not recorded.

## The Four Ports Group

Port of Bandon  
Port of Port Orford  
Port of Gold Beach  
Port of Brookings Harbor

Governor Kulongoski, in Executive Order 08-07 and several other communications, lays out the specific requirement that local communities need to be heavily involved in the process of nominating and selecting Marine Reserves for Oregon. The Four Ports Group was formed in direct response to that requirement.

The Port's of Bandon, Port Orford, Gold Beach and Brookings Harbor have all passed formal resolutions directing the Four Ports Group to organize and develop a review process for Marine Reserve Nominations and to represent the interests of each Port in their review and recommendations. In addition, The Cities of Brookings Harbor, Gold Beach, Port Orford and Bandon, each have done the same with either formal Resolutions or instructive letters.

Each of the members of the Four Ports Group have developed local teams comprised of a wide variety of interests from City Council Members, Port Commissioners, Commercial Fishermen, Recreational fishermen as well as recreational ocean users to serve as a review committee for Nominations that exist in their local area.

We have developed the accompanying procedure for review, comment and recommendation to OPAC.

We look forward to being included in the formal OPAC process of nomination and selection of Marine Reserves in Oregon.

Port of Gold Beach – Bill McNair

Port of Port Orford – Gary Anderson

Port of Bandon – Reg Pullen

Port of Brookings Harbor – Ji Relaford

## Four Ports Group

### Marine Reserves Review process

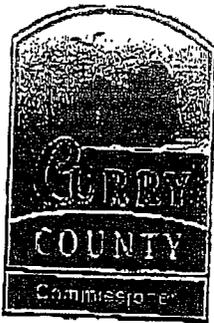
1. The 4 PORTS group is committed to represent the interests of our local communities and to be open minded, fair and courteous when reviewing nominations for Marine Reserves.
2. We encourage the nominator of the potential Marine Reserve to be present during the 4Ports Review process and if possible present to the committee the rationale for their nomination
3. The factors and criteria to be used in our evaluation are :
  - a. **Economic Impact** – we will establish to the best of our ability the potential economic impact of the Proposed MR to the surrounding communities by applying local knowledge.. This impact may be a negative impact or it could be a positive impact.
  - b. **Ecological and scientific contribution** – we will attempt to discern what the ecological and scientific goals are for the proposed MR and apply local knowledge regarding the validity and achievability of those goals.
  - c. **Enforceability** - What is the plan for enforcement? Cost?
  - d. **Monitoring** – What are the methods of monitoring the progress of the MR in meeting its stated goals. Is there a plan for periodic review of the status of the MR with reference to its stated goals.
  - e. **Termination of the Marine Reserve** – Is there a plan for expiration of the Marine Reserve when it has met it goals?
4. Each of the communities, Bandon, Port Orford, Gold Beach and Brookings have formed review committees who will provide the first evaluation. Nominators of Marine Reserves are encouraged to send their proposals to the address below after which a public meeting will be scheduled for direct input from the nominator as well as members of the general public. The local committees will then write up their evaluation and comments. After which the 4PORTS groups as a whole will review the local effort and proceed to forward to OPAC a written evaluation and recommendation to OPAC.

Port of Gold Beach

Port of Port Orford

Port of Bandon

Port of Brookings Harbor



Curry County Board of Commissioners

Georgia Yee Nowlin, Chair
Lucie La Bonté, Vice Chair
Marlyn Schafer, Commissioner

94235 Moore Street / P.O. Box 746
Gold Beach, OR 97444
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October 6, 2008

Four-Ports Group

(Ports of Brookings-Harbor, Gold Beach, Port Orford and Bandon, and community members)

The Curry County Board of Commissioners recognizes the Four-Ports Group as a "community-based" group to review, comment on and evaluate Marine Reserves (MRs) and/or Marine Protected Area (MPAs) proposals as meant in executive orders, letters and directives by Gov. Ted Kulongoski. MRs and/or MPA proposals therefore should be brought before the Four-Ports Group for its review to comply with the "community support" requirement in the Governor's order.

For example, in his Executive Order No. 08-07, Gov. Kulongoski wrote that MRs (and presumably and more recently MPAs as detailed by the Oregon Department of Fish and Wildlife) shall be "Give[n] priority consideration to marine reserve designation nominations developed by coastal community nominating teams (e.g., Nearshore Action Teams) comprised of coastal community members, ocean users and other interested parties." E.O. No. 08-07, pg. 3, 3.c.

Further guidance on the role of community-based groups came from Gov. Kulongoski in a letter from him to Brookings Mayor Pat Sherman: "First, a person nominating a reserve must describe possible economic effects of siting a reserve in their proposed location." Letter, Gov. Kulongoski to Pat Sherman, 14 December 2007, pg. 1, point 2.

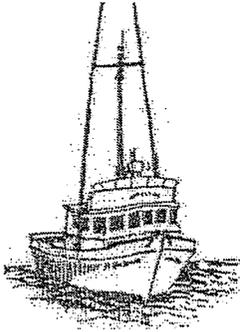
Ocean users include; recreationists, commercial fishermen, ports and ocean-related businesses. "Other interested parties" are, for example, local governments and persons or groups who participate in an affected area economy and society. The purpose of groups like the Four-Ports group is to act on the behalf of their constituents including ocean users (recreationists, commercial fishermen and others) who could be economically affected by MR and MPA proposals.

ODFW Chief of Fisheries Ed Bowles also stated in June, at ODFW/Sea Grant outreach meetings in Gold Beach, North Bend and at an Ocean Policy Advisory Council meeting in Salem, respectively, that MR proposals should be vetted by community-based ocean users groups like Fine, SOORC or the Four-Ports group or risk being at the bottom of the stack. Therefore we feel that any MR or MPA proposal should be reviewed and supported by the Four-Ports group to move forward.

Handwritten signature of Georgia Nowlin
Commissioner Georgia Nowlin
Chair

Handwritten signature of Lucie La Bonté
Commissioner Lucie La Bonté
Vice Chair

Handwritten signature of Marlyn Schafer
Commissioner Marlyn Schafer



## **Port of Port Orford**

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**CURRY COUNTY OREGON**

The Port of Port Orford

Resolution 2008-4

**A RESOLUTION OF THE BOARD OF COMMISSIONERS APPROVING PARTICIPATION IN THE FOUR PORTS GROUP FOR THE PURPOSE OF PROVIDING REVIEW OF AND COMMENT ON MARINE RESERVES AND WAVE ENERGY SITE NOMINATIONS, AND APPOINTING A PORT REPRESENTATIVE TO THE GROUP**

**WHEREAS**, By Executive Order No. 08-07, Governor Kulongoski has directed and ordered Oregon's Ocean Policy Advisory Council (OPAC) to recommend not more than nine sites on the Oregon Coast for the purpose of establishing Marine Reserves (Page two, Section 3b);

**WHEREAS**, By the same Executive Order, Governor Kulongoski has directed OPAC to implement this process by January 1, 2009 ( Page two, Section 3a);

**WHEREAS**, By the same Executive Order, Governor Kulongoski has directed OPAC to "Give priority consideration to marine reserve designation nominations developed by coastal community nominating teams comprising coastal community members, ocean users and other interested parties;

**WHEREAS**, The Ports of Bandon, Port Orford, Gold Beach and Brookings Harbor desire to form an organization (The Four Ports Group) whose purpose would be to provide the community review and analysis of any nominated Marine Reserve sites potentially located in southern Coos County and Curry County, and further to present that analysis and commentary formally to OPAC prior to OPAC decision with regard to site recommendations.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Port of Port Orford approves participation in this group (Four Ports Group), and

2. The Port of Port Orford endorses the purpose for which it is being formed; and
3. The Port of Port Orford, further, will appoint a representative from the Port of Port Orford to the Group; and
4. The Port Representative so appointed will report regularly to the Board of Commissioners on the deliberations of the FOUR PORTS Group.

Adopted this 19<sup>th</sup> day of August 2008 by the Board of Commissioners of the Port of Port Orford.



President



Secretary



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1100 Fax (541) 469-3650  
[gmilliman@brookings.or.us](mailto:gmilliman@brookings.or.us)

**GARY MILLIMAN**  
*City Manager*

Jim Relaford  
Port of Brookings Harbor  
P.O. Box 848  
Brookings, OR 97415

August 27, 2008

Dear Mr. Relaford,

This will confirm that, at their meeting of August 25, 2008, the Brookings City Council voted unanimously to endorse the proposal to designate the Four Ports Group as the local agency for review of Marine Reserve proposals for the Curry County and southern Coos County coast.

The Council also indicated a high level of interest in this matter and would like to be advised of all meetings of the Four Ports Group for possible attendance by a City representative.

Respectfully,

Gary Milliman  
City Manager

Cc: Mayor and Council

## Proposals Received

- 1) Whale Cove to Devil's Punchbowl – individual
- 2) Otter Rock Marine Reserve – NSAT
- 3) Mack Reef Marine Reserve – community group
- 4) Redfish Rocks Research Marine Reserve and Bycatch and Discard Reduction MPA – POORT
- 5) 20 Miracle Miles Reserve Proposal (Cascade Head to Beverly Beach) - individual
- 6) Cape Falcon Proposal Area – Our Ocean
- 7) Three Arch Rocks Proposal Area – Our Ocean
- 8) Cascade Head Proposal Area – Our Ocean
- 9) Cape Foulweather Proposal Area – Our Ocean
- 10) Cape Perpetua Proposal Area – Our Ocean
- 11) Siltcoos Proposal Area – Our Ocean
- 12) Cape Arago Proposal Area – Our Ocean
- 13) Mack Reef Proposal Area – Our Ocean
- 14) Tillamook Head Marine Reserve - individual
- 15) Heceta Head and Cape Perpetua Marine Reserve and Protected Area – community group
- 16) Three Arch Rocks Proposal Area – community group
- 17) Cascade Head Proposal Area – community group
- 18) Seven Devils Marine Reserve (South Cove at Cape Arago to Five Mile Creek) - individual
- 19) North Coast Ocean Conservation Action Teams Cannon Beach and Manzanita Proposal – community group
- 20) Cape Foulweather Proposal – community group

DRAFT OPAC Review Process  
October 7, 2008

- I. Clarify range of potential end products by OPAC  
Steps:
  - A. Description of strengths and weaknesses of each proposal
  - B. Prioritization of proposals with recommendations for how each proposal could be improved
  - C. Which proposals should go forward as recommendations for further evaluation or as pilot projects and how each proposal could be improved
- II. OPAC decision making process
  - A. Strive for consensus
  - B. Majority vote with opportunity to capture and forward minority opinion
- III. Discuss draft proposal analysis worksheet
- IV. State agency analysis
  - A. On October 23<sup>rd</sup> OPAC will be presented with a state agency analysis of the proposed sites
- V. Proposal presentations
  - A. On October 23<sup>rd</sup> OPAC will hear presentations on the proposed sites from the presenters, with time for Q&A
- VI. Begin OPAC review
  - A. On October 24<sup>th</sup> OPAC will begin their formal review of proposals. OPAC will discuss the proposals, focusing on the themes and corresponding criteria found on the proposal analysis worksheet. Discussion should focus on each proposal's strengths and weaknesses in each of these areas.
  - B. Near end of the day on October 24<sup>th</sup>, OPAC will take a straw poll to get insight into which proposals overall are seen as high, medium, and low in meeting the overall criteria.
  - C. Proposals that rank low, will be set aside from further discussion. Rationalization for why the proposal was ranked low will need to be documented.
  - D. Between October 24<sup>th</sup> and November 17<sup>th</sup> OPAC members should continue further review of the proposals, get feedback from their constituents, and consider the proposal analysis worksheet.
  - E. OPAC will need to decide if they need another meeting before November 17<sup>th</sup>, for further discussions.
- VII. OPAC decision at November 17<sup>th</sup> meeting
  - A. Begin with a recap of the results of the straw poll. Reminder that OPAC will be focusing on proposal initially ranked as medium and high in the poll
  - B. Use proposal analysis worksheet to guide deliberation of proposals
  - C. Develop final recommendation (refer to item I.)

# Draft Analysis Proposal Worksheet

Proposal No.	Coarse Review Criteria and Some Related Considerations	Strength	Comments
<p>Ecological Significance</p> <p>Questions on Proposal Form: 2, 4, 5, 8, 9, 10</p>	<p><b>Criteria:</b></p> <ol style="list-style-type: none"> <li>1) Habitat representation               <ol style="list-style-type: none"> <li>a) proposed site includes a variety of habitat types; or</li> <li>b) in regions of homogenous habitat, the proposed site includes a valued contiguous single key habitat type; or</li> <li>c) proposed site includes special natural features or characteristics</li> </ol> </li> <li>2) Proposed site is large enough to allow scientific evaluation of ecological benefits, <i>but small enough to avoid significant adverse economic or social impacts on ocean users and coastal communities</i></li> <li>3) There is, in reasonably close proximity to the proposed site, an area that can be used as a nonreserve comparison area</li> <li>4) Proposal addresses the potential impacts of existing or proposed infrastructure</li> <li>5) Proposal describes adjacent protected areas in the terrestrial or marine environment, if present, and/or describes adjacent marine, land, or watershed uses that may affect the site</li> </ol> <p><i>Some Considerations Rising from Criteria:</i></p> <ul style="list-style-type: none"> <li>• Types and amounts of habitat present</li> <li>• "Quality" of the habitat: high biodiversity; special/unique natural features; adjacent land uses; other issues such as buried cables, ocean outfalls, wave energy.</li> <li>• Depth range</li> <li>• Potential species present</li> <li>• Species most likely to be benefited (given size, habitats present, etc.)</li> <li>• Potential benefits from the adjacent protected area that adds to the overall benefits of the site</li> </ul>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	

Proposal No.	Course Review Criteria and Some Related Considerations	Strength	Comments
<p>Avoids Significant Economic/Social Impacts</p> <p>Question on Proposal Form: 3, 10</p>	<p><b>Criteria:</b></p> <p>2) <i>Proposed site is large enough to allow scientific evaluation of ecological benefits, but small enough to avoid significant adverse economic or social impacts on ocean users and coastal communities</i></p> <p>6) <i>Proposed site will avoid significant adverse economic and social impacts on ocean users and coastal communities. The proposal includes information on existing and potential future uses/users of the proposed study area, and an estimation of the degree to which uses/users will be positively or negatively affected</i></p> <p>5) <i>Proposal describes adjacent protected areas in the terrestrial or marine environment, if present, and/or describes adjacent marine, land, or watershed uses that may affect the site</i></p> <p><i>Some Considerations Rising from Criteria:</i></p> <ul style="list-style-type: none"> <li>• Which fishery (e.g., crab, commercial nearshore hook and line, sport groundfish, commercial or sport salmon, urchin, others) and other users will be affected</li> <li>• Which uses occur in the proposal area?</li> <li>• Did proposer contact each?</li> <li>• Size of proposed area</li> <li>• Relative importance of the area to fisheries and other uses</li> <li>• How thorough was the community proposal process in its efforts to ensure impacts were minimized?</li> <li>• Special significance to users (e.g., only site accessible to certain boats, etc.)</li> </ul>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	

<p>Community Collaboration Question on Proposal Form: 7</p>	<p><b>Criteria:</b> 7) Proposal was developed by collaborative community-based groups comprised of coastal community members, ocean users and other interested parties</p> <p><i>Some Considerations Rising from Criteria:</i></p> <ul style="list-style-type: none"> <li>• Composition of group that made the proposal: coastal community members, ocean users, and/or other interested parties?</li> <li>• Did the proposer contact official user groups (FACT, FINE, etc.), others with local knowledge of the proposed site, city governments, county governments, port districts, chambers of commerce, coastal legislators, etc.?</li> <li>• What reaction did the proposer get from each of the contacts?</li> <li>• Did the proposer have public meetings; if so how many?</li> <li>• Was the public (including ocean users, coastal communities, and other stakeholders) involved/give input in any other way?</li> <li>• Consider different levels of community: <ul style="list-style-type: none"> <li>-Communities of interest (local and broad)</li> <li>-Communities of place</li> </ul> </li> </ul>	<p>1 2 3 4 5</p>	
<p>Other factors Question on Proposal Form: 6</p>	<p><b>Criteria:</b> 6) Enforcement/compliance of proposed site (if later designated as a marine reserve) is realistic</p> <p><i>Some Considerations Rising from Criteria:</i></p> <ul style="list-style-type: none"> <li>• What is the size of the proposed reserve? Boundaries? Other enforcement considerations?</li> <li>• Are the boundaries identifiable from shore?</li> <li>• Is vessel activity visible from shore?</li> <li>• Are there provisions to mark with site boundaries?</li> </ul>	<p>1 2 3 4 5</p>	
<p><b>OVERALL STRENGTH OF PROPOSAL:</b> (High, Medium, Low)*</p>			

\* Scale: Low = proposal is weak in meeting the coarse criteria, High = proposal is strong in meeting the coarse criteria

October 6, 2008

Memo To: Ocean Policy Advisory Council

From: Jay L. Rasmussen, Chair, Scientific and Technical Advisory Committee

Subject: Committee Update

This memo serves as a brief update of recent activities of the Scientific and Technical Advisory Committee (STAC) and transmits several Committee products.

The Committee met in Corvallis on September 16, 2008, for a half-day with Laurel Hillmann assisting. Agenda items included an update and a detailed discussion on the marine reserves process with Oregon Department of Fish and Wildlife staff Cristen Don and Dave Fox and with Oregon Sea Grant faculty member Jeff Feldner. Discussion items included the status, timeline, roles and outreach process based on the new approach and the potential roles for and resource needs of the Committee.

The Committee also received updates on and generally reviewed the draft size and spacing workshop report and the draft economics workshop (objectives, structure, process, funding, scheduling and reporting) and endorsed both efforts. The Committee also had conversations on its operating procedures with respect to the marine reserves process. The Committee reaffirmed that Committee members could provide specific scientific information during the process outside their roles with the Committee.

The Committee also met Juna Hickner, a Sea Grant Natural Resources Fellow from the University of Oregon Law School, who recently (September 2, 2008) began her fellowship with the Oregon Department of Fish and Wildlife. The focus of her fellowship will be on marine reserves and wave energy issues, including methods of developing and funding marine reserves.

Attached to this memo are the following Committee products:

- A roster of expertise that combines and extends information provided to the Ocean Policy Advisory Council over the past year. Please keep in mind that the list is not all-inclusive of expertise and many listed have broader expertise than may be noted. Also, listing does not indicate availability and willingness to provide knowledge.
- The marine reserves size and spacing report. This report has been a major undertaking of the Committee—particularly Selina Heppell with assistance from Jack Barth and Craig Young. Despite the fact that Committee members have been fully subscribed with teaching and research while developing this report, it has been a very collaborative effort.

- Information related to the economics workshop scheduled for October 21-22, 2008 at the Hatfield Marine Science Center. The Committee has been diligent, as it was in gathering the size and spacing workshop participants, to invite expertise from a broad spectrum of the disciplines involved. The meeting is open to the public and will result in a report to OPAC. The Committee will be considering a subsequent workshop on the social/human dimensions aspects of marine reserves.

The Committee appreciates this opportunity to provide an update and to transmit products.

DRAFT AGENDA

**Ocean Policy Advisory Council Scientific and Technical Advisory Committee  
Technical Workshop on Economic Data and Analysis of Marine Reserves**

Oct 21-22 2008

Library Seminar Room

Hatfield Marine Science Center Newport, OR

**Workshop Objective:** To assess the status of economic data and analysis with regard to siting and management of marine reserves in Oregon waters and to reach a series of findings and conclusions regarding the availability and adequacy of data.

**This is a technical workshop focused on economic data and analytical methods useful to inform decision-makers. The workshop will explore tools for evaluating decision outcomes but will not include advocacy for particular policy outcomes.**

**Reporting Objective:** To produce a report for STAC adoption and subsequent submission to OPAC. The report will identify economic questions relevant to: the size, siting and management of marine reserves, describe appropriate economic methodology, assess the existence and adequacy of economic data and identify economic data gaps

**Workshop format:** Workshop will be open to the public, but discussions will be limited to invited participants. Public comment periods will be held at the end of each morning and afternoon session. Written submissions are also welcome.

**Tuesday October 21**

9:00 – 9:10	Welcome: STAC Chair Jay Rasmussen
9:10 – 9:30	Workshop Chair Susan Hanna <ul style="list-style-type: none"><li>• Introductions</li><li>• Review of workshop format and ground rules</li><li>• Review and approval of agenda</li></ul>
9:30 – 10:00	Oregon OPAC Objectives for Marine Reserve Presentation: OPAC objectives (10 minutes)
10:00 – 11:00	What are the economic questions relevant to Oregon marine reserve objectives? Discussion
11:00 – 11:15	Break
11:15 – 12:15	What are the economic analytical methods relevant to marine reserves? Setup presentation: summary of economic analyses of marine reserves (10 minutes) Discussion

12:15 – 12:30	Public comment
12:30 – 1:30	Lunch provided invited participants
1:30 – 2:30	Presentations: Models and software [15 minutes presentation/15 minute discussion] 2:00 – 2:30 TBD 2:30 – 3:00 TBD 3:00 – 3:30 TBD
2:30 – 3:30	What are the economic analytical methods relevant to marine reserves in Oregon? Discussion
3:30 – 3:45	Break
3:45 – 4:45	What data are needed to support economic analyses of Oregon marine reserves? Discussion <ul style="list-style-type: none"> <li>• Market goods and services</li> <li>• Non-market goods and services</li> </ul>
4:45 – 5:00	Public comment
5:00	Adjourn for the day: Dinner on your own

### Wednesday October 22

8:30 – 9:00	Discussion: review of Day 1 and modification of Day 2 agenda
9:00 – 10:30	Inventory of existing economic data State data: ODFW (15 minutes) Federal data: TBD (15 minutes) GIS data: TBD (15 minutes) Discussion
10:30- 10:45	Break
10:45 – 11:30	What are the data gaps for Oregon marine reserves? Discussion <ul style="list-style-type: none"> <li>• Identification of data gaps</li> <li>• Cost of bridging the gaps</li> </ul>
11:30 – 1:00	Workshop findings and recommendations Discussion
1:00 – 1:30	Public comment
1:30	Adjourn Lunch provided invited participants

**THEODORE R. KULONGOSKI**  
GOVERNOR



DEPT OF

OCT 10 2008

LAND CONSERVATION  
AND DEVELOPMENT

October 6, 2008

Scott McMullen, Chair  
Oregon Ocean Policy Advisory Council  
c/o Mr. Jay Charland  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

Dear Chair McMullen:

Thank you for forwarding the *Cumulative Effects Study, Request for Proposals* that was developed by the Ocean Policy Advisory Council's (OPAC) Wave Energy Working Group (WEWG). This study is a priority for the state of Oregon, and the Governor's Natural Resources Office will work with the appropriate entities to endeavor to complete the study. The WEWG should be congratulated for persevering to get the study defined, reviewed, and fully scoped.

Strategically, it is helpful that the study is divided into two phases. We are pleased to be able to work with the Oregon Wave Energy Trust (OWET) to implement Phase I under OWET's present round of funding. This first phase will develop the analytical framework and should be completed by the end of calendar year 2009. Since the cumulative effects scope of work appears regionally applicable, we will also ask the Ocean Action Coordination Team for Alternative Energy to consider its incorporation and implementation as a component of the West Coast Governors' Agreement on Ocean Health (WCGA).

Many other studies are still in the planning stage, including those conducted with OWET and U.S. Department of Energy funding, as well as research being initiated as part of the Reedsport Wave Energy Project. Hence, it is not clear whether all of the needed information will yet be available to implement Phase II immediately after Phase I is completed. It may take a year or more of delay between phases until Phase II is ripe.

Robin Hartmann, Chair of OPAC's WEWG, has assembled a group of environmental experts to advise OWET in making awards for environmental studies. Greg McMurray (Department of Land Conservation and Development) and Cathy Tortorici (National Oceanic and Atmospheric Administration's Fisheries Service) were also primary authors of the cumulative effects study and are members of the OWET committee, so there should be full continuity with the implementation of Phase I. Dr. McMurray is also a member of the WCGA's

Scott McMullen, Chair  
Page Two  
October 6, 2008

Alternative Energy Action Coordination Team, so we will request that he track and identify opportunities to fully implement Phase II of the study.

Thank you again for your efforts to develop the *Cumulative Effects Study, Request for Proposals* for wave energy. I look forward to working with you to bring this project to fruition.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Hamilton', written in a cursive style.

Jessica Hamilton  
Natural Resources Policy Advisor

JH:ab

c: Robin Hartmann, OPAC  
Greg McMurray, DLCD

**THEODORE R. KULONGOSKI**  
GOVERNOR



September 8, 2008

Regulations and Standards Branch (RSB)  
Minerals Management Service  
Department of the Interior  
381 Elden Street, MS-4024  
Herndon, Virginia 20170

Subject: Alternative Energy and Alternative Uses of Existing Facilities on the Outer Continental Shelf, 1010-AD30

Dear Sir/Madam:

Thank you for the opportunity to comment on the proposed rule regarding alternative energy and alternative uses of existing facilities on the Outer Continental Shelf (OCS). The State of Oregon greatly values its marine resources and the communities that rely upon their sustainable use. We are particularly interested in the portions of the rule pertaining to alternative energy and thus focus our comments on that topic, however, we also address the potential of developing aquaculture in the OCS.

Governor Kulongoski supports renewable energy development in environmentally, economically, and socially responsible ways. Oregon intends to be a national leader in the research and development of ocean wave energy. We continue our commitment to working in partnership with Federal, West Coast, State, Tribal, regional, and local jurisdictions and organizations, and our coastal communities, to develop ocean-based renewable energy in a responsible manner.

Oregon is not the only West Coast state examining options for offshore wind, wave, current, and tidal energy production. In the recently released Action Plan for the West Coast Governors' Agreement on Ocean Health, Governors Kulongoski, Gregoire and Schwarzenegger expressed support for the coordination and clarification of regulatory processes between the state and federal waters in regards to alternative ocean energy. The Action Plan called for convening a workshop to "explore the feasibility of West Coast-wide approach and consistency of state and federal regulatory programs, and begin drafting a regional plan." We appreciate MMS's leadership during organization of the workshop which will take place in Portland on September 22-23, and we look forward to our continued work with the agency during implementation of the Action Plan.

The State of Oregon is generally supportive of the Minerals Management Service's (MMS) efforts to help bring alternative energy technologies to fruition in the Exclusive Economic Zone. The State of Oregon believes strongly in developing partnerships with our federal agency partners and project developers to provide economic, energy and resource development opportunities while protecting the marine ecology and environment and our coastal community's economic stability and vitality. We generally find that the proposed rule provides for a comprehensive review and approval process, without being too restrictive on the emerging wave energy industry.

We recognize the commitment of MMS in developing this new alternative use program and the earnest effort it has put forth in drafting the rule. We appreciate that the proposed rule provides for the rigorous collection and analysis of scientific data, as well as socioeconomic studies, both of which are needed to support state and federal decision-making. The thoroughness of the review and implementation processes articulated in the rule make it evident that MMS, given its long tenure in regulating offshore oil and gas industry, has demonstrable experience and technical capacity for regulating energy projects on the OCS. In addition, MMS has considerable scientific expertise related to ocean processes and has demonstrated its ability to conduct the type of effective environmental study programs which will be needed to perform the necessary monitoring, evaluation and adaptive management programs.

The information, comments and recommendations below relate to specific topics, areas of concern, or sections of the rule that require clarification or improvement.

#### **JURISDICTION AND PERMITS**

- The State of Oregon is the owner of the submerged and submersible land underlying the territorial sea. The territorial sea is defined in ORS 196.405(5), and includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction. The State of Oregon is an adjacent landowner to the OCS and to projects authorized under these proposed rules.
- The Department of State Lands (DSL) has resource and proprietary jurisdiction over the territorial sea. State statutes administered by DSL governing activities associated with these types of projects include but are not limited to: Removal Fill – ORS 196.795 – 196.990; Wetlands – ORS 196.600 – 196.692; Proprietary – ORS 274.005 – 274.994. Any lease, right-of-way, right-of-use, or easement issued by MMS under these proposed rules will likely effect and encroach on state-owned lands under DSL's jurisdiction, and require both proprietary and regulatory authorizations from DSL. State administrative rules administered by DSL governing activities associated with these types of projects may generally be found at OAR chapter 141, divisions 1 – 140. These rules include but are not limited to: Removal Fill/Wetlands – OAR chapter 141, divisions 85, 86 and 90;

Proprietary – OAR chapter 141, divisions 82, 83, 122, 140; State Agency Coordination – OAR chapter 141, division 95.

- MMS should note that the State of Oregon, through DSL, has established administrative rules for the placement of Ocean Energy Conversion Devices on, in or over state-owned land within the Territorial Sea (OAR chapter 141, division 140). MMS should also note that the State of Oregon, through DSL, has established administrative rules for granting easements for fiber optic and other cables on state-owned submerged and submersible land within the territorial sea (OAR 141-083). A “cable” is defined in OAR 141-083-0820(1) as “means a conductor of electricity or light with insulation or a combination of conductors insulated from one another.”
- The Oregon Parks and Recreation Department (OPRD) has jurisdiction through statute and administrative rules that govern the Ocean Shore Recreation Area. OPRD is charged with management and permitting decisions for activities and improvements on the ocean shore, as specified in Oregon’s Beach Laws (ORS 390.605-390.770). The State Recreation Area is described as the area of land or water, or a combination of, that is under the jurisdiction of OPRD that is used by the public for recreational purposes. The Ocean Shore means the land lying between the extreme low tide of the Pacific Ocean and the statutory vegetation line (ORS 390.770) or the line of established upland shore vegetation, whichever is farther inland. To bring the power to shore, any conduit (e.g., pipeline or cable) that would cross the Ocean Shore Recreation Area would require permitting by OPRD.
- Oregon has an established and effective energy facility siting process, and most large energy facilities in Oregon are under the jurisdiction of the Oregon Energy Facility Siting Council (EFSC). We ask that MMS actions be consistent with our EFSC process in siting energy facilities on the OCS off Oregon’s coast.

## **ALTERNATIVE ENERGY**

### Federal Consistency

The State of Oregon is encouraged by the multiple opportunities MMS provides in the process for applying the federal consistency provisions of the Coastal Zone Management Act (CZMA) to lease activities in the Exclusive Economic Zone (EEZ). Those opportunities are: prior to the lease sale, when the Site Assessment Plan (SAP) or General Activities Plan (GAP) is approved, for the Construction and Operations Plan (COP), and lastly, for the decommissioning of a facility. The applicability of federal consistency includes reasonably foreseeable ecological effects that might be expressed in the Coastal Zone, even if caused by activities outside state waters but within the EEZ, and includes socioeconomic effects of federal activities as expressed

in Oregon's ports and communities. A collaborative approach among state and federal partners will ensure that the applicant and MMS are able to meet that certification standard.

Federal consistency and early coordination are also applicable to the access easements needed for the power transmission cable as addressed under Subpart B § 285.200 of the proposed rules. Cables that transit the state's territorial sea are regulated by the state's enforceable policies under Statewide Planning Goal 19 (Ocean Resources) and the Territorial Sea Plan Part Four (Uses of the Seafloor). These include aforementioned approval for use of the seabed from the DSL and for the ocean shore from the OPRD; as well as a Federal Water Pollution Control Act Section 401 Water Quality certification from the Department of Environmental Quality (DEQ). The proposed rule should address the right-of-way (ROW) easements early (at the lease sale or SAP stage), rather than later as part of the COP or GAP. Doing so may avoid potential conflicts with other users and to provide greater certainty and lower cost to project developers.

#### Coordination, Consultation, and Stakeholder Involvement

Oregon and its coastal communities rely heavily on the ocean resources off Oregon's coast for their well being. Alternative energy development could directly affect the marine ecology, as well as the numerous species of birds and anadromous fish that migrate to and from the ocean that require unimpeded access to marine waters. In addition, alternative energy facilities could hinder human access to those marine resources, access which includes recreational wildlife viewing as well as commercial and sport fishing. Due to the value the State of Oregon places on its marine resources and the people who rely upon their sustainable use, we are encouraged that MMS has a stated intention to encourage stakeholder involvement in the leasing and project development process. However, this intention must be clearly incorporated into the rule language.

Leases issued under the rule will essentially create dedicated wave energy facility use zones during the term of the lease. As such, lease sale areas should be selected as to minimize effects on existing uses such as those identified above. The most effective means of avoiding user conflicts is to require coordination between the applicant, state and local governments, and other stakeholders at the earliest point in the site selection process.

As Oregon's Ocean Policy Advisory Council (OPAC) recommended to Governor Kulongoski on this topic, MMS should "develop language requiring pre-lease sale coordination... as a precursor to development of a site assessment plan (SAP), which is the initial action requiring a NEPA assessment and CZMA consistency determination." Currently, under Subpart A §285.102, the proposed rule implies that the MMS will coordinate and consult with the governor of the affected state and executive of the affected local government. Both §285.203 and §285.204 state that MMS may invite the governor and affected local governments to participate in a joint task force or joint planning or coordination agreement.

There appears to be some degree of inconsistency in the rule with respect to mandatory versus discretionary consultation and coordination with state and local governments. MMS should mandate coordination and consultation by MMS with the affected state and local governments during the area identification stage and throughout the remaining SAP and COP review processes. The rule should also require project developers to coordinate and consult with stakeholders in adjoining states early in the planning and development of their proposed projects. This requirement should be included under Subpart A §285.105.

The lack of involvement in the process of lease sale site selection and the discretionary involvement of state and local government in that process, pose significant challenges to the emerging wave energy industry. This was made evident in the Federal Energy Regulatory Commission (FERC) licensing process for wave energy facilities in Oregon, which alienated various stakeholder groups and hampered collaboration efforts early in the process. OPAC advised Governor Kulongoski that MMS should "adopt the use of a settlement agreement type process, like that used by FERC, to ensure an opportunity for early stakeholder involvement and compatibility with the TSP and other regulatory programs." The use of a FERC settlement agreement process is working effectively for stakeholder engagement and consensus building for proposed wave energy projects in Oregon, and MMS may want to consider inserting the use of such a process as an alternative to the joint task force concept provided for under §285.203. MMS should consider and incorporate signed settlement agreements conditions into lease agreements and other documents required by the rules.

#### Existing Users

We request that MMS more clearly explain the terms "use" and "user." For instance, we would argue that fisheries should be included in Subpart A §285.102 (7) as "other authorized users of the OCS." Under §285.102 (9) "reasonable uses" should also be clearly defined. We for instance would argue that in many instances both commercial and recreational fishing are considered reasonable uses.

#### Sensitive Species

The GAP and Subpart E §285.801 focuses on addressing species listed as Threatened or Endangered under the Federal Endangered Species Act and animals protected under the Marine Mammal Protection Act. States have also designated other species as sensitive and are thus of concern to the state. These state sensitive species should also be considered as part of the GAP and Subpart E §285.801. Additionally, states should be consulted about species that have been identified as economically or ecologically important, which are those in need of protection in order to maintain their populations.

Based on OPRD's key management responsibility for Oregon's beaches, it is crucial that ocean shore resources be considered within the required environmental consultations and

completion of compliance documents. For example, potential impacts to Snowy Plovers from the project should be identified and managed, though their habitat may not be within the project area.

#### Scaled or Staged Development

Oregon is very interested in assisting industries in the development of sustainable clean alternative energy production such as wave energy. We understand that there are many questions about the impacts from these new technologies on the environment and on other users of marine resources. We therefore appreciate and support efforts by industry to use pilot projects to test the technology and measure the impacts. We also appreciate MMS's determination to "promote diligent development and ensure use of the most effective and efficient operating procedures and technologies." We agree that technology will evolve significantly in the span of a long-term commercial lease and that it is important to incorporate mechanisms that encourage the use of more efficient commercial operational practices into the rule.

The leasing process reflects MMS's desire for "long-term, large scale commercial production." The state like MMS also wants the leasing process to allow for "shorter-term, smaller scale activities in support of alternative energy production, such as site assessment and technology testing activities." We agree with the MMS assessment that developers would likely select the commercial leasing process rather than the limited leasing process. The proposed leasing process therefore would potentially favor large, well-funded energy developers, ones likely already with OCS experience and previously involved in energy or extractive resource production. This situation could present barriers to market entry for smaller, innovative developers, who intend to grow as their technologies are proven and financing becomes available.

The long-term leasing process may not afford the opportunity for developers to readily scale up from site assessment and technology testing to commercialization at a specific site. Those with limited leases, who may have already made a substantial investment in their site, could find the risk involved in obtaining a commercial lease through competitive bidding overly burdensome. This could be a serious disincentive to research and development activities, a vital component to this young industry. The costs associated with both the non-competitive and competitive lease programs may be prohibitive to the smaller developers who may be experimenting with different types of technology. The two-phase lease would allow a developer to prove their technology, study the impacts through routine monitoring, and design a large-scale commercial project that could be implemented under the commercial lease phase. While OCS Lands Act requirements must be met regarding competition, MMS should reconsider allowing for the scaling of projects to ensure fairness and ease of market entry.

#### Site Banking

The designation of specific areas as research and testing sites under §285.238 is a forward looking concept that Oregon fully endorses. Oregon State University is leader in developing wave energy conversion technology and is making a concerted effort to institute a national wave energy research center. Designating areas for research and development activities will support those initiatives.

The state appreciates MMS's determination to "avoid situations where leases are acquired for strategic or purely speculative purposes." Diligence requirements will address this, but MMS should also consider additional strategies to ensure that individual developers could not tie-up large areas of the OCS, thereby prohibiting other development interests and, potentially, other uses.

#### Oregon Territorial Sea Plan

The state is currently in the initial stages of reviewing its Territorial Sea Plan (TSP), with the intention of amending it specifically for designating areas deemed appropriate for wave energy facility development. Because we have not yet amended the TSP to designate those special use areas, we believe that MMS should consider temporarily delaying the commercial lease acquisition process for areas adjacent to Oregon's territorial sea and consider only issuing the short-term limited lease (5-year) for site assessment and technology testing purposed.

A two-stage lease (discussed above) could be available to industry as an option for testing and phasing-in development during the interim period prior to the state's completion of the TSP plan for wave energy in the Territorial Sea. Once the state has completed the TSP plan amendment for wave energy, MMS should base all decisions regarding the selection of areas available for lease sale on the spatial allocation of uses prescribed in the state plan. Doing so will direct development to areas that are compatible with the protection of valuable fisheries and critical marine habitat resource areas in the adjacent Territorial Sea. This strategy will provide certainty to the alternative energy industry as it assesses areas for potential development, and also ensure existing users that the resources they depend on will not be unduly compromised or affected.

#### Adaptive Management

The proposal's Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments invokes the concept of adaptive management as a means of adjusting to potential unforeseen environmental impacts, or changes to the operation of the facility, over the term of the lease. Adaptive management is important to allow a project to modify its operation if it is found through monitoring that unintended consequences are occurring because of the construction, operation or placement of a project.

The proposed rule states that MMS will specify the terms by which the adaptive management will be incorporated into the SAP, GAP and COP. However that is not currently evident in the listed requirements for those plans. MMS should require adaptive management as one of the standard components the SAP, GAP and COP, wherein the information gathered through the routine inspections and monitoring will be used when necessary and appropriate to make changes in the operation of the facility to mitigate unanticipated harmful impacts on the environment.

#### Recovery Plan

The state is concerned about potential safety and environmental risks posed by offshore alternative energy facilities within the OCS for commercial and recreational users of the territorial sea and ocean shore. If components from alternative energy facilities (e.g., infrastructure or material components as well as synthetic fluids) come ashore, they could pose safety risks to ocean shore visitors. Salvage operations, clean-up operations, or both might close or restrict the ocean shore to recreational use, or cause harm to the natural resources of Oregon's beaches and rocky shores.

In the proposed rule, there is no explicit requirement or standards for commercial lease applicants to incorporate a clean-up and recovery plan as a mandatory component of the GAP or COP. We recognize that both the proposed GAP (§285.645) and COP (§285.621) refer to the use of best available and safest technology and best management practices. Equipment failures and the need for the operator to have a "corrective action plan" are discussed in Subpart H under the topical heading: Equipment Failure and Adverse Environmental Impacts. In addition, §285.810 specifies the required elements of the Safety Management System plan as a mandatory component of the SAP, GAP and COP, as essentially an emergency accident response procedures. However, none of these sections of the rule adequately address the possibility of a large-scale structural failure of the facility, brought about by extreme climate conditions, a tectonic geologic event, or a navigational error by a large vessel.

The state therefore recommends that a distinct recovery plan be a mandatory component of the COP rather than a general description of operating procedures in case of emergencies. The recovery plan would be analogous to the oil spill and hazardous material plans required of ships and port facilities, and would provide the necessary assurances that the facility operator, along with state and federal agencies such as the US Coast Guard, are capable of managing the outcome of a systematic failure of the facility. In general, the recovery plan should include provisions for notice and reporting; prompt removal; liability assignment; and cleanup and restoration/mitigation of damages to Ocean Shore Recreation Area and territorial sea resources. The plan should include a timeframe for both response and recovery, and should be connected in the rule to the financial assets supported by the bonding. Currently, the only reference to a timeframe for recovery actions is under §285.815, where the rule requires that all facility damage

and equipment failures be repaired as soon as possible and that MMS be notified as soon as practicable. We recommend a response plan that includes more, detailed timeframes for action. The rule should also ensure that, if a developer does not salvage its property within the time allowed, that MMS may use the bond to acquire salvage services and may also pursue civil penalties. In addition, the plan should also acknowledge OPRD permit requirements for conducting non-traditional uses on the ocean shore.

#### Bonding

As OPAC noted in its letter to Governor Kulongoski, "The proposed rules are not clear on how bonding will be scaled-up to cover financial and liability needs for a fully-expanded commercial facility." This matter is particularly important with respect to the potential costs of clean up and recovery should the facility suffer damage or cause significant impacts, especially outside the lease area and within the state territorial sea or Oregon's Ocean Shore Recreation Area. Therefore, MMS should clarify how the calculations conducted to determine amounts required for bonding (beyond the initial \$100,000 bond) will consider costs associated with removal, cleanup and mitigation of damages to adjacent areas. It is imperative that the rule establish a process for notification to appropriate parties (including state agencies). The proposed rule should require that adequate funding be available to ensure timely removal, clean-up and mitigation of damages. The rules must also clarify how agencies involved in such procedures would be able to recover costs (e.g., OPRD costs for managing public access in the event of an unplanned event such as infrastructure on the beach).

#### Cumulative Effects

As more alternative energy projects are developed on the OCS, the cumulative effects of those projects may compound individual effects and put an additional strain on the ecology of the marine environment. MMS should require that lessees and project developers address potential cumulative effects of their project in conjunction with all other projects in a given area. The rule should require that the lessees identify potential cumulative effects as part of the SAP. The GAP should require the assessment activities to identify whether cumulative effects are occurring and whether the project is contributing to those cumulative effects, and whether or not cumulative effects can be addressed. The COP should then outline what steps the project will take to address cumulative effects if they are found to occur.

#### Disagreements

The rule is unclear as to the process available to the state or other stakeholders to address and remedy disagreements arising from the content of the SAP, GAP or COP, other than that offered by the comment review process. This is particularly important where a ROW easement issued with a commercial lease crosses the state territorial sea. The State of Oregon recommends that MMS develop language to include such a process.

### Leasing Process Timeframes

The rule describes a timeline for the project site selection through the lease sale process that is aggressive and seems to offer a minimal opportunity for the state and other stakeholders to respond. It is unclear what happens during the area identification process or how long that period may extend prior to the proposed sale notice. This is a critical period where potential user-conflict issues may be avoided or resolved, and it occurs simultaneously with MMS performing the NEPA and CZMA review which have their own separate timelines. The state would appreciate clarification on how those proposed processes and timelines coincide, overlap or follow each other.

### Federal Jurisdictional Issues

In my May 21, 2007 letter of comment on the Alternative Energy and Alternate Use PDEIS, I noted the existing discontinuity between the siting authorities of MMS and FERC across the seaward limit of the territorial sea. On behalf of Governor Kulongoski, I urged MMS to work with FERC resolve this issue. We are aware that efforts have been made by both organizations to enter into a memorandum of understanding, and again urge you to come to resolution. Unresolved jurisdictional issues increase the level of regulatory uncertainty facing the wave energy industry, impeding industry progress and the ability to develop projects within the OCS. The jurisdictional overlap problem is further exacerbated for potential sites that straddle the territorial sea and OCS.

## **ALTERNATIVE USES OF EXISTING FACILITIES**

### Aquaculture

Under Subpart J, existing OCS facilities may be used for alternative uses. Before MMS approves any alternative use, the adjacent states and local governments should be consulted as well as federal agencies under §285.1006(a). A similar process should be undertaken with stakeholders as recommended above for the initial lease and project development. The rule should also require that the alternate use to develop similar documents to the SAP, COP and GAP to identify and address any potential issues with the proposed alternative use.

Oregon is especially concerned about existing OCS facilities developing aquaculture as an alternative use. Development of offshore aquaculture and the appropriate regulatory authority have been topics of considerable controversy, especially in the past few years. The US Commission on Ocean Policy included recommendations for offshore aquaculture in its comprehensive report in 2004. However, Oregon's Governors have expressed concerns about establishing offshore aquaculture off Oregon's coast. Oregon has serious concerns about the potentially significant negative effects from marine aquaculture on Oregon's marine resources, ocean fisheries, and coastal communities.

Offshore aquaculture is an issue not to be taken lightly. Oregon's coastal communities have a long history of harvesting wild salmon, groundfish, Dungeness crab and other species in a diversified fishery. Oregon's Native Fish Conservation Policy promotes the conservation and recovery of native fish. In addition, state rules on wildlife integrity, fish management, and hatchery operation take into account the potentially serious adverse impacts of offshore aquaculture on native species and ecosystems, including water quality degradation, invasive species, disease, genetic and chemical contamination, pollution from fish waste and antibiotics, and physical interference with fisheries, research, and shipping.

A national strategy for offshore aquaculture does not yet exist. The MMS proposed rule presents a piece-meal approach and thus compromises achievement of such a national strategy. Under the proposed rule, MMS could authorize offshore aquaculture at OCS sites, but authority for offshore aquaculture at non-OCS sites remains unspecified and appears disconnected from the MMS decision-making process. The proposed rule gives lead authority and decision-making to MMS for offshore aquaculture activities at OCS sites, however, NOAA's National Marine Fisheries Service (NMFS) is the lead federal agency responsible for marine fisheries management. NMFS, working in partnership with regional fisheries management councils, has the experience, information and trained personnel, as well as established processes for communication and coordination with affected marine interests. In conclusion, MMS should not allow aquaculture at OCS sites until a national Offshore Aquaculture policy has been established and then only allow offshore aquaculture to be developed in conjunction with and following all the requirements of the national policy.

## CONCLUSION

Thank you for the opportunity to provide comments on the proposed rule regarding alternative energy and alternative uses of existing facilities on the Outer Continental Shelf. The State of Oregon looks forward to a long-term partnership with MMS in the development of ocean-based renewable energy on the OCS and on-going protection and enhancement of Oregon's ocean ecosystems and coastal communities. Should you like to discuss the State of Oregon's positions further, please contact Jessica Hamilton on my staff at 503-986-6530.

Sincerely,



Michael Carrier  
Natural Resources Policy Director

MC:jh:ab

# **PROCEDURES of the OREGON OCEAN POLICY ADVISORY COUNCIL**

## **STRUCTURE**

### **Officers**

The Council will elect a Chair from among its membership, pursuant to ORS 196.438(4), and may elect such other officers, including a Vice Chair and an at-large Executive Committee member, as it deems necessary. Council offices will be held for a period of two calendar years. Officers may be re-elected to subsequent terms of office.

### **Committees**

The Council will appoint a Scientific and Technical Advisory Committee, chaired by the Sea Grant Director or other similarly qualified member, pursuant to ORS 196.451. Other standing or *ad hoc* committees and subcommittees may be appointed by the Council as deemed necessary. Committee and subcommittee members may be Council members or members of any sector appropriate to the committee's work; committee members will be appointed by, and serve at the pleasure of, the Council.

## **ROLES**

### **Chair and Vice-Chair Roles**

The Chair of OPAC will work with an Executive Committee, consisting of the Chair, Vice-Chair, Governor or Governor's designee, STAC Chair, and an at-large position filled with a Council voting member, with support of staff and meeting facilitators, when such facilitators are needed, to design agendas that will be both efficient and effective. The Council Chair (or Vice-Chair in his/her absence) will be responsible, in consultation with members and facilitators, for proposing and finalizing meeting agendas. The Council meetings will be chaired by the Chair. When appropriate, the use of a facilitator will enable the Chair to participate directly in the substantive process of building consensus and seeking agreement on recommendations. The Council's staff, STAC, and other councils, panels, and working groups, will assist the Council by providing appropriate information to support decision making and advisory recommendations.

### **Council Member Roles**

OPAC members serve on the Council representing key stakeholder interests, agencies, and the public, as set out in ORS 196.438. All members will directly engage in the consensus-building process, including the identification of issues and development of options informed by technical assistance, and will make consensus decisions on recommendations to the Governor, the State Land Board, state agencies, and local governments. Members of the STAC are encouraged to participate in the Council's consensus building on the development of options, but, with the exception of STAC members who are also OPAC voting members, will not participate in voting on the Council's reports and decisions on recommendations.

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There is an expectation that members will bring the concerns and perspectives of their various constituencies to the Council's table, where appropriate, for discussion and possible consensus building. It is understood that many members participate in other initiatives at local, state, regional, and national levels and may advocate in those forums for solutions on issues related to the Council's work, but will make it clear they are representing only themselves, not OPAC, unless OPAC has taken an official position on the matter, in which case it should be presented verbatim.

To enhance the possibility of constructive discussions and dialogue as members educate themselves on the issues and engage in consensus building, members agree to be candid and respectful of the diversity of views on the topics the Council will address. Members agree to avoid personal attacks both at the table and away from the table.

## **AGENDA DEVELOPMENT**

### **Overall Policy Statement**

The Council will attempt to follow an agenda at each meeting that balances the needs to expeditiously complete a planning work program, provide a forum for discussion and action on issues as needed, allow public notice of actions to be taken, and provide the public with a means to raise issues for consideration by the Council.

### **Agenda Development**

The agenda for each Council meeting will be developed from three major sources:

1. The work program and task schedule agreed to by the Council;
2. Additional items proposed by Council members based on a solicitation of Council members prior to the Executive Committee meeting; and
3. Requests from the Governor, State Land Board, state agencies or local government, or the public approved in advance of the meeting.

All agendas will be prepared by the Executive Committee and approved by the Chair prior to distribution. Draft agendas will be posted on the OPAC web site and mailed to members and to the public at least one week prior to Council meetings. The Executive Committee will invite chairs of Council working groups to Executive Committee meetings as necessary.

## **CONSENSUS AND DECISIONS**

### **Overall Policy Statement**

The Council will endeavor to reach consensus on each policy item or plan decision, including recommendations and resolutions to the Governor, State Land Board, state agencies or local government. A consensus process will enable the Council to more freely discuss issues to arrive at a decision acceptable to all. In some instances, precise wording of a consensus decision may be developed by staff after review of recordings of the discussion for approval by the Council at a subsequent meeting.

### **Consensus Defined**

Consensus means that each OPAC member can say: (1) I was a respected member of the group that considered the decision; (2) my ideas (opinions, knowledge, concerns, beliefs, hopes) were listened to; (3) I listened to the ideas (opinions, knowledge, concerns, beliefs, hopes) of others; and (4) I can

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support the decision of the group, even though I might have made a different decision had I acted alone.

OPAC will seek consensus decisions on their advisory recommendations. General consensus is a participatory process whereby, on matters of substance, the members (voting and nonvoting), strive for agreements that they can accept, support, live with, or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members’ support for the final decision on a recommendation, and the Council finds that 100 percent acceptance or support is not achievable, final decisions will require a majority of a quorum of voting members, per OPAC standard voting guidelines. This majority decision rule underscores the importance of actively developing consensus throughout the process on substantive issues with the participation of all members. The consensus process will preserve the opportunity for minority opinions to be expressed and reflected in the record of the Council’s deliberations.

**The Consensus Building Process**

OPAC will develop its recommendations and reports using consensus-building techniques, normally with the assistance of facilitators. In some cases, OPAC members may act as facilitators, but may step aside periodically to participate as a group member. Techniques such as the use of brainstorming, ranking and prioritizing approaches will be utilized and consensus-building procedures consistent with these guidelines reviewed and adopted by the Council.

**Quorum/Voting**

In those instances where consensus cannot be reached after debate and discussion, the Chair may initiate or entertain a motion to vote on the issue. All members, voting or *ex officio*, may fully participate in discussion. Voting members may make motions and seconds. All motions must be seconded to be acted upon. The Chair may also elect to suspend debate and set aside the issue to a subsequent meeting. Minority reports, per se, will not be issued, but all products and positions of the Council will reflect minority positions, with minority language to be approved by minority members.

A majority of the voting members of the Council, which may include the Chair, constitutes a quorum for the transaction of business. A council member may attend a meeting, participate and vote by telephone. A quorum is necessary for an official vote of the Council. A majority vote of the quorum present is necessary to take an action. The following table specifies the minimum number of concurring votes necessary to pass or reject a motion:

Number of Voting Members on OPAC	Minimum Number Present to Form Quorum	NUMBER OF VOTING MEMBERS VOTING (with a quorum present)													
		1	2	3	4	5	6	7	8	9	10	11	12	13	14
14	8	X	X	X	X	5	5	5	5	5	6	6	7	7	8

The Council may meet, hear testimony, receive information, deliberate, discuss and take informal “sense of the Council” votes without a quorum of members, but cannot take official action.

A motion to reconsider a decision may be entertained by the Chair, if a majority of those present votes to reconsider.

**Attendance**

Council members take seriously the responsibilities of membership and will endeavor to attend and participate in all Council meetings. However, members recognize that unavoidable conflicts may prevent attendance at all meetings. This is especially burdensome to the non-state agency Governor’s appointees who have no other option for representation in case of absence.

When a Council member is absent from three successive Council meetings, the Council may request that the Governor remove that member and appoint another to fill the term of that position. When a member is absent four out of five successive Council meetings, the Council shall request that the Governor remove that member and appoint another to fill the term of that position.

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**Voting Action**

The Council will endeavor to provide effective notice to the public, groups, agencies and interest parties of official voting actions which the Council may take at a meeting and to provide to both Council members and any interested party written materials related to the proposed action.

Whenever an item placed on the agenda may result in an official vote of the Council, that item shall be so noted on the agenda as an “Action Item” and shall be so indicated in the public notice the meeting at which the item will be discussed.

The Council, through its staff, will attempt to provide written information on any proposed “Action Item” which describes the proposed action, the issues involved, legal or policy implications and other information which will assist the public and the Council to understand the item and conclude discussion prior to a vote. This information will, if at all possible, be made available to the members and the public no less than one week prior to the meeting where action will be taken.

**Meeting Records**

All Council meetings will be videotaped to provide an official record. Written minutes will be prepared, as required by Oregon law (ORS 192.650(1)).

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**Council Records**

All public records of the Council, not otherwise exempt from disclosure by law, are available for inspection and copying. The Department of Land Conservation and Development (DLCD) will act as custodian of the public records of the Council. On behalf of the Council, DLCD will respond to public record requests in a reasonable time, in accordance with the provisions of OAR 660-040-0005 and the Public Records Law, ORS 192.410 to 192.505.

## ADDENDUM: CITIZEN INVOLVEMENT

### Overall Policy Statement

The Ocean Policy Advisory Council (Council) will provide citizens with meaningful opportunities to participate in the ocean planning process, including issues scoping, policy formulation, plan preparation, plan review and adoption, and implementation. Moreover, the Council will be proactive in seeking out creative and novel ways for the public to be involved in the Council's work.

### Participation in Council Meetings

Citizens will be encouraged to participate in Council meetings in three ways:

1. General public comment.

A specific "open mic" time for public comment to the Council will be set aside during each regular Council meeting and noted on the agenda. Members of the public intending to make comment will be asked to sign up, so that time can be equitably shared, and a record of those speaking is provided to assist in generating an accurate meeting summary. Written comments will also be accepted at any time from the public.

2. Topical public testimony, comment or discussion.

The Council may ask for testimony, comment or discussion on certain agenda items prior to Council deliberations; these "Action Items" will be indicated on the agenda. The Council may limit public comment on any agenda item and reserve deliberations for Council members only. At the sole discretion of the Chair, a citizen may be asked to participate during Council discussion.

3. Citizen presentations.

Citizens or groups may request from the Chair time on the Council's agenda to present information or discuss an issue with the Council; requests for time should be made at least 14 days prior to the scheduled meeting and will be subject to time available. To facilitate citizen access to the Council when agenda time is limited or unavailable, the Chair may designate a committee of Council members to meet with citizens to more fully discuss particular issues.

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### Notice of Council Meetings

It is the policy of the Council to ensure that citizens are informed as to when and where the Council will meet and the topics to be discussed, with special attention to note those items on which the Council may take official action. The Council will maintain a web site upon which agendas and documents will be made available to the public, and a mailing list of interested parties to whom notice of meetings and agendas will be sent.

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### Public Workshops

The Council intends to conduct workshops and community meetings whenever appropriate or necessary to solicit facts, opinions and ideas. Workshops will be structured to encourage an exchange of information and to facilitate discussion among participants. To ensure that citizens from along the entire Oregon Coast can conveniently participate, the Council will take care to hold workshops along the entire coast as well as inland.

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**Meeting Locations**

The Council recognizes the special difficulty of holding meetings on the Oregon Coast and the unavoidable burden placed on both Council members and the public to travel a long distance no matter where Council meetings are held. The Council will endeavor, over time, to meet in all regions of the coast. Actual locations will be determined based on issues to be discussed, availability of appropriate meeting locations and lodging, previous meeting locations and Council wishes.