
INTEROFFICE MEMORANDUM

TO: BOB BAILEY
FROM: PAUL KLARIN
RE: TERRITORIAL SEA PLAN AMENDMENT PROCESS
DATE: 10/06/2008
CC: RICHARD WHITMAN

BACKGROUND

This memo outlines the timeline for amending the Territorial Sea Plan, as directed by the Governor's March 26, 2008 Executive Order No. 08-07, Directing State Agencies to Protect Coastal Communities in Siting Marine Reserves and Wave Energy Projects. The order was prompted by the concerns of coastal communities and commercial and recreational fishers, that the implementation of a marine reserve system combined with areas being sought to develop wave energy facilities in Oregon's Territorial Sea (0 to 3 nautical miles from the ocean shore), would significantly restrict the areas available fishing and harm the economies of coastal communities.

The EO directed the department to "seek recommendations from OPAC (Ocean Policy Advisory Council) concerning appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy projects. On or before July 31, 2009, DLCDC shall begin the process to develop proposed amendments to Oregon's Territorial Sea Plan for consideration by LCDC for such amendments. DLCDC shall provide final amendment recommendations to LCDC on or before December 1, 2009". The order further directs the department to submit the TSP amendment to NOAA for incorporation as an enforceable policy of the Oregon Coastal Management Program under the CZMA. Lastly, the order also directs Oregon Sea Grant and the Oregon Coastal Zone Management Association to provide outreach and public education to coastal communities concerning the potential positive and adverse impacts of wave energy development.

On that same date, the State of Oregon and Federal Energy Regulatory Commission (FERC) signed a Memorandum of Understanding to "coordinate the schedules and procedures for review of wave energy projects in the Territorial Sea and to ensure coordinated review of proposed wave energy projects that is responsive to environmental, economic, and cultural concerns while providing a timely, stable, and predictable means for developers of such projects to seek necessary approvals". The MOU provides that FERC will, in issuing a permit or license, "consider the extent to which the proposed

project is consistent with the Oregon plan”. In addition, FERC will also “consider any terms and conditions that are recommended by Oregon under section (10)(a)(3) or the Federal Power Act (FPA) to ensure consistency with the Oregon Plan”.

When completed, the commission will adopt the amendment to the TSP by reference. The commission’s authority to amend the TSP is derived under ORS 196.471 Territorial Sea Plan Review Requirements: (1) The Land Conservation and Development Commission shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments:

- (a) Carry out the policies of ORS 196.405 to 196.515; and
- (b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals.

(2) After making the findings required by subsection (1) of this section, the commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program.

(3) If the commission does not make the findings required by subsection (1) of this section, the commission shall return the plan or amendments to the council for revision. The commission may specify any needed revisions.

(4) Upon adoption of the Territorial Sea Plan or subsequent amendments the commission may, after consultation with affected state agencies, identify amendments to agency ocean or coastal resource management programs necessary to conform to the provisions of the adopted plan. [1991 c.501 §20; 1993 c.18 §35]

OPAC’s responsibilities in amending the TSP are prescribed by 196.443 Duties of Council. (1) The purposes of the Ocean Policy Advisory Council are to: (a) Periodically review the Territorial Sea Plan and submit recommendations for the plan to state agencies represented on the council. The council shall recommend deletions to the Territorial Sea Plan of all site designations and management prescriptions to the Land Conservation and Development Commission.

The commission last amended the Territorial Sea Plan in 2000, when, with the advise of OPAC, it revised Part One Ocean Management Framework to add section (G) including a preamble, goals and policies, and added Part Four: Uses of the Seafloor – section (A) Telecommunication Cables, Pipelines, and other Utilities. The department, based on discussions with OPAC members, Oregon Sea Grant, OCZMA and other state agency staff, has concluded that it would not be feasible to meet the timeline set by the EO for amending the TSP, unless the process is initiated immediately. The following timeline

and tasks describe, in general terms, how that process must proceed in order for OPAC to fulfill its advisory role, and for the department to meet the December 2009 deadline to deliver a draft TSP plan amendment to the commission.

Work Plan

As described above, amending the TSP requires the department to work directly with OPAC, and is also dependent on the assistance of Sea Grant and OCZMA, primarily in the public outreach, engagement and mapping efforts. Listed below are the principal components of the “work plan” to amend the TSP, including the time period and estimated budget cost for each task. The plan is a work in progress, primarily because the various agencies have not been provided with additional funds to perform the work, nor was the work part of their currently budgeted work programs.

Outreach and Engagement

This task is being undertaken primarily by Oregon Sea Grant and OCZMA, and consists mainly of their separate efforts to involve regionally-based communities of fishing interests. To date, most of the outreach effort has been focused toward the local user groups that have organized in the principal fishing ports. Those groups include Fishermen Involved in Natural Energy Committee (FINE), Fisherman’s Advisory Committee for Tillamook (FACT), Southern Oregon Ocean Advisory Committee (SOORC). FINE and FACT are both constituted as advisory committees to their respective county commissions. The Coastal Division’s policy analyst has been attending meetings of the local advisory groups to inform and incorporate them into the various opportunities available for their engagement in the process.

OCZMA is contractually committed, through the wave energy trust and the Economic Development Administration (EDA) (part of US DOC) to engage in outreach with coastal communities and the fishing industry on wave energy development. The EDA grant to OCZMA for wave energy outreach is \$75,000, of which \$30,000 is obligated toward the support of local ocean resources planning groups (FINE, FACT and SOORC) to work issues related to potential wave energy development. \$10,000 is going to FINE, FACT, and SOORC. The Oregon Wave Energy Trust (OWET) provided OCZMA with \$30,000 in matching funds for the work. Both funding sources will end by June 2009..

OPAC also provides a limited source of engagement for coastal stakeholders through its’ meetings and public comment process. The OPAC TSP workgroup has assessed the need for outreach and engagement and scoped out the range of stakeholders who could have an interest in the process of amending the TSP for wave energy.

Duration: July 2008 – October 2009

Budget: Estimated cost: \$50,000. DLCD and Sea Grant have not received any additional funding for outreach. OCZMA has some funding from a federal Dept. of Energy grant, a portion of which is allocated for work with local communities on the integration of wave energy.

Mapping and Analysis

The TSP, with the exception of selected Rocky Shore areas, does not currently allocate the use of marine resources based on spatial location. Rather, it depends on a resource inventory and effects evaluation to make resource use decisions. The proposed TSP amendment, by contrast, will direct wave energy development to specific areas based on a comprehensive analysis of biological resources, geologic structures, and the existing uses of marine resources, primarily for commercial and sport fishing. A prerequisite for performing the spatial analysis to delineate which areas are appropriate for different uses, including wave energy development, is a comprehensive map of the existing resources and their usage. That involves mapping fishing effort and high value biological features such as critical marine habitat areas.

The data collected by state and federal agencies through commercial fisheries licensing and regulation, while useful, is neither adequate nor specific enough to provide a comprehensive map of fishing effort. That data must be collected with the direct contribution of the commercial and sport fishing community members. It requires the use of a tested standardized mapping methodology which is based on a labor-intensive survey of statistically significant percentage of the fishing community to determine where they fish. The hundreds of individual data sets collected through the surveys are compiled to form a comprehensive map of fishing effort, and then combined with data sets of existing uses, biologic and geologic features, and other information.

The Coastal Division is allocating approximately \$50,000 of its federal FY 2008 §309 CZM funds towards a pilot mapping effort by the SOORC group for the fishing areas along Coos and Lane Counties. This area was chosen because the Reedsport Wave Energy Project was designated as an Oregon Solutions project by Governor Kulongoski in October 2006. The goal of that project is to define and ensure broad stakeholder involvement in the regulatory process for the Reedsport Wave Energy Project proposed by Reedsport OPT Wave Park, LLC (OPT). That agreement that is produced by the settlement process will form the basis for the terms and conditions of the license that FERC would issue for a phased build-out of a wave energy facility off Reedsport in Land County. OPT has subsequently submitted a notification of intent letter to FERC declaring their intent to apply for a full license for fully built-out commercial power facility off the north spit of Coos Bay.

A coastwide mapping initiative will require substantial funding that is not available in the department budget or in that of any of the other marine cabinet agencies. OCZMA is seeking private foundation funding of up to \$1 million to assist in the development of the TSP amendment by: (1) providing resources to a network of local ocean resource planning groups, (2) the preparation of socio-economic studies in impacted coastal communities (tied or integrated with fishing grounds information), (3) providing resources to local groups to develop fishing grounds information. The Oregon Wave Energy Trust (OWET) may have some funds available in its FY 2007-2009 budget to contribute toward this task, but they have not yet made a decision to allocate the funds.

The estimate for completing a coast-wide mapping effort is from 9 to 12 months. That effort would need to be initiated this fall in order to meet the deadline set by the EO of having a amendment ready for LCDC review by December 2009. The timelines for all subsequent tasks are based on the mapping being completed by fall 2009.

Duration: October 2008 – October 2009

Funding: Estimated cost: The cost for the fishing effort mapping is estimated to be . No state funds available. DLCD has dedicated \$50,000 for a pilot mapping project from the FY 2008 §309 CZM federal funds.

OPAC Territorial Sea Plan Workgroup

The OPAC Territorial Sea Plan workgroup, which was formed with the expressed purpose of amending the TSP, has already initiated a review of the current sections of the TSP on policy and making resource use decisions, specifically for wave energy development. OPAC has decided that the workgroup will consist solely of OPAC members, thereby limiting the range of stakeholders who are represented. The workgroup will develop draft amendments to the text of the appropriate sections of the TSP, and will also draft a new section (Part 5) of the TSP that will focus solely on the environmental review and siting of wave energy facilities in the TSP. The TSP workgroup intends to have draft versions of the relevant sections of the TSP, including Part 5 for Wave Energy Development, available for review by the spring of 2009. The workgroup will then forward their recommendation to the OPAC for consideration by the summer of 2009, and OPAC will make a final decision of its recommendation to the department and LCDC by the September.

Duration: July 2008 – August 2009

Budget: Funding for OPAC and its workgroups is provided by the department from its' annual federal CZM grants.

Department Advisory Committee

The department is asking the LCDC for permission to appoint an advisory committee that then will make recommendations to LCDC on the amendments to the TSP as a single body, including minority reports. The advisory committee membership will consist of a

full range of affected stakeholders and interested parties, including the wave energy industry, fishing interests and commodities commissions, power companies, local port advisory groups, researchers, state and federal agencies, conservation and environmental groups, etc, as well as the members normally required by the LCDC citizen involvement guidelines.

The group membership will be formed in late 2008, with the group's first meeting in early 2009. Group members will spend the first few months familiarizing themselves with the issues and the existing TSP. It is anticipated that the OPAC TSP workgroup will be able to provide the agency advisory workgroup with draft versions of the TSP amendments by the spring of 2009. The advisory workgroup will continue to meet through the fall of 2009, and make its recommendations to the LCDC by November.

Duration: January 2009 to December 2009.

Budget: Estimated cost: DLCD funds workgroup support and activities.

Commission Review

It is anticipated that the OPAC and the department's advisory committee will have completed their reviews and prepared recommendations, by late fall 2008, and that the department will have completed a draft of the TSP amendment shortly thereafter for review by LCDC. The commission can choose to review the draft amendment and take action immediately or, depending on the advise of OPAC and the DLCD advisory workgroup, delay taking action.

Commission Action

The commission, in an administrative rulemaking action, will adopt the amendment to the Territorial Sea Plan by reference. The public hearing for this action can be conducted during the same commission meeting.