

Report from David Allen (OPAC representative on TSPAC; TSPWG chair and OPAC public at-large member) for December 4, 2012 OPAC meeting in Tillamook

At the April 9, 2012 OPAC meeting in Newport, an initial recommendation for the spatial component of the Territorial Sea Plan (TSP) amendment process for marine renewable energy (MRE) was forwarded to the LCDC Territorial Sea Plan Advisory Committee (TSPAC).

Prior to that, in 2011 and early 2012, a series of public meetings and workshops in coastal and inland communities, around 25 in all, were held by the OPAC Territorial Sea Plan Working Group (TSPWG) regarding the spatial component for TSP Part Five. The Land Conservation and Development Commission (LCDC) had adopted TSP Part Five in November 2009 after a 15-month public process conducted by TSPWG, OPAC, and TSPAC.

Starting in May of this year, TSPAC and its several subcommittees met on a regular basis to add to the work of the initial recommendation from OPAC. This work has culminated in draft products now ready for OPAC review toward a final recommendation sometime early next year. For example, a set of revised plan area descriptions (*draft attached*) as well as a visual resource inventory assessment and a revised TSP Part Five, to name just a few.

With all this work, in addition to the Goal 19 resources/uses mapped out and now part of Oregon MarineMap, there is still a remaining yet critical issue to be resolved. And it is one that has only recently emerged for general public review – *i.e.*, those areas currently under consideration with respect to a “handful” of site designations for potential MRE development.

Understandably, this issue has generated considerable interest and concern with the general public and also specific stakeholders. And many perceive the public review of those areas as being “rushed,” as noted recently in a resolution adopted by AOC, the Association of Oregon Counties (*copy attached*).

In my view, as a public at-large representative in this TSP process, that is a valid concern. And as noted before, with respect to other issues OPAC has addressed, it is a state policy to ensure that OPAC “work closely with coastal local governments to incorporate in its activities coastal local government and resident concerns, coastal economic sustainability and expertise of coastal residents.” ORS 196.420(6).

With respect to a “handful” of site designations for potential MRE development, how does this issue get resolved by TSPAC (and then OPAC)?

One suggestion that has gained traction as of late is the idea of focusing on research and testing before any development (in particular commercial-scale). Just recently, the Fishermen Involved in Natural Energy (FINE) committee of Lincoln County weighed-in on this (*see attached letter*). And at the last TSPAC meeting (Nov. 16), several TSPAC members spoke of it as well.

Is this a reasonable path forward within the context of underlying documents such as the March 2008 MOU (memorandum of understanding) between the state of Oregon and FERC?

Perhaps, especially if TSP Part Five can provide the necessary sequential pathway toward that end, ensuring both protection of Goal 19 resources/uses and sufficient clarity and certainty for the marine renewable energy industry.

Territorial Sea Plan Resources and Uses Area Map Designations:

The area descriptions below apply to the map designations incorporated into the Territorial Sea Plan Part Five, as appendix C.

Renewable Energy Permit Area (REPA): these areas are delineated sites for which there is an existing authorization for the development of MRE testing, research or facilities. Applications for MRE development within a REPA must comply with the terms and conditions required by the regulating agency authorization for the site.

Renewable Energy Facility Suitability Study Area (REFSSA): an area wherein there may be ecological resources, or activities relating to commercial fishing sectors, recreational fishing, or individual ports. MRE development may be sited within a REFSSA. MRE development in these areas is anticipated to have the lowest potential adverse effects on inventoried marine resources and uses within state waters. A proposal for MRE development in a REFSSA must comply with TSP Part Five Sections B.4.a through f., and C, and the applicable regulatory and proprietary requirements of state and federal agencies.

Resources and Uses Management Area (RUMA): an area wherein there are important or significant ecological resources, or an area that is economically important to commercial fishing sectors, recreational fishing, or individual ports. MRE development may be sited within a RUMA. Under some circumstances there is a potential for MRE development to have significant adverse effects on inventoried marine resources and uses within these areas. A proposal for MRE development in a RUMA must demonstrate that the project will have no significant adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses in that area.

Resources and Uses Conservation Area (RUCA): an area wherein there are important, significant, or unique (ISU) ecological resources, or an area that is significantly economically important to commercial fishing sectors, recreational fishing, or individual ports. MRE development could be sited within a RUCA, though there is a high potential that most types of MRE development would have significant adverse effects on inventoried marine resources and uses within the area. A proposal for MRE development in a RUCA must demonstrate that the project will have no reasonably foreseeable adverse effects on inventoried marine resources and uses as determined by the standards for protecting those resources and uses in that area.

Renewable Energy Exclusion Area (REEA): special management areas. These areas contain permitted or managed uses that have some form of exclusive right or authority to exclude, restrict or control other uses in that area. Examples of these types of authorizations include dredge material disposal sites, marine reserves and marine protected areas. Applications for MRE development will not be accepted within a REEA.

Proprietary Use and Management Area (PUMA): areas wherein there are authorized uses and special management designations. These areas are subject to some form of authority to restrict or control other uses. Examples of these types of authorizations include undersea fiber-optic or scientific instrumentation, cable corridors, and navigation channel and pilotage safety corridors. MRE applications in these areas will not be accepted by regulating agencies unless the use is legally permissible, complies with the authorized use of the area, and has been agreed to by the authorized users.

Resolution 2012-

Territorial Sea Plan: Public Input

WHEREAS, the State of Oregon has initiated a new chapter to the Territorial Sea Plan;

WHEREAS, an advisory committee of stakeholders has been formed to produce a draft addition to the plan, which will be reviewed by the Ocean Policy Advisory Council, then sent to the Land Conservation and Development Commission;

WHEREAS, ORS 197.040 (2)(f) provides that LCDC shall "insure widespread citizen involvement and input in all phases of the process."

WHEREAS, ORS 196.420 (6) provides that "it is the policy of the State of Oregon to ensure that the Ocean Policy Advisory Council will work closely with coastal local governments to incorporate in its activities coastal local government and resident concerns, coastal economic sustainability and expertise of coastal residents."

WHEREAS, LCDC will produce a final version of the plan, which it will adopt by administrative rule;

WHEREAS, the process is currently scheduled to be completed by January 2013;

WHEREAS, the public has only recently become aware of the process and the idea of energy facilities within the Territorial Sea Plan, and perceives the process as rushed;

WHEREAS, the plan will be viable only if the public has the opportunity to catch up with the process; that is, gain a better understanding of the proposed plan;

WHEREAS, public understanding of the plan is critical to its success;

NOW, THEREFORE, BE IT RESOLVED that the Association of Oregon Counties respectfully requests that the process for the adoption of the amended Territorial Sea Plan be extended for a reasonable period to permit a more thorough public involvement in the final version of the plan.



November 26, 2012

Board of Commissioners

Courthouse, Room 110
225 W. Olive Street
Newport, Oregon 97365
(541) 265-4100
FAX (541) 265-4176

Governor John Kitzhaber, MD
900 Court St., NE
Salem, OR 97310

Dear Governor Kitzhaber:

On November 20, 2012 the Fishermen Interested in Renewable Energy (FINE) Committee unanimously voted to recommend to the Lincoln County Board of Commissioners that a 6 to 7 mile square mile area of ocean, west of Newport, become the site of the Pacific Marine Energy Center (PMEC). PMEC would be a grid-connected offshore energy research facility. The Oregon Wave Energy Trust (OWET) has identified development of PMEC as their highest priority. Laying the groundwork for PMEC has now also become a high priority for the Lincoln County fishing community and other key community stakeholders.

The area of ocean off Lincoln County selected by FINE poses fewer conflicts with recreational/commercial fishing activities and other existing uses of the ocean than other sites off the Central Coast. Dr. Belinda Batten, Director of Oregon State University's (OSU) Northwest National Marine Renewable Energy Center (NNMREC), attended the FINE meeting. Dr. Batten, working collaboratively with fishing industry representatives, provided valuable input that enabled FINE to delineate a site for PMEC that meets the key logistical features OSU needs to optimize their research program.

The membership of FINE has always been supportive of ocean energy *technology and environmental impacts* research. Since 2006, FINE has worked closely with OSU Sea Grant Extension and the faculty of NNMREC. For example, FINE worked with OSU to identify the existing one-square mile NNMREC wave energy research site off Yaquina Head. In addition, on an ongoing basis, FINE provides technical and practical advice to OSU and wave energy technology companies utilizing NNMREC on the logistics of marine operations at NNMREC. NNMREC and the wave energy companies will tell you that leveraging the collective experience of local fishermen, who understand the realities of working in a harsh marine environment, is a key ingredient of success.

Not surprisingly, with the growing cluster of world-class oceanographic research activities taking place in Newport, the members of FINE and other leaders in Lincoln County believe that *research* on ocean energy is a natural fit for our community.

However, the members of FINE also strongly oppose the identification of ocean areas adjacent to and near the Central Coast (*especially* within Oregon's Territorial Sea) for future utility-scale/commercial ocean energy projects.

The members of FINE are deeply concerned about the potential future loss of ocean space. The State of Oregon's marine reserve designation process and the siting of NNMREC consumed approximately 19% of Lincoln County's Territorial Sea. No other sub-region of the Oregon Coast was asked to absorb that level of reduced fishing effort.

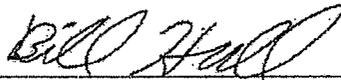
Over the last few years the members of FINE developed a good understanding of the status of the wave energy industry. In a larger sense, they *don't* believe it is necessary, at this time, especially *in Oregon's Territorial Sea*, to establish very many sites for commercial-scale wave energy operations. Wave energy is a nascent industry. They are nowhere close to producing electricity at price points that are competitive with other renewable energy technologies (in particular, the terrestrial wind industry). The exception to that rule may be in niche markets, in particular, remote island communities where energy costs are prohibitive.

More than anything, the members of FINE believe a focus on research makes sense for both industries. Together, those industries can develop the most efficient and effective technologies for energy production. We all have a stake in the development of efficient wave energy technologies. That will help us concentrate and pinpoint the appropriate locations of commercial scale sites based on proven technologies. It follows, then, with highly efficient/effective ocean energy devices, ocean energy projects can have minimal impacts on the marine environment and the other sustainable/beneficial uses of the ocean.

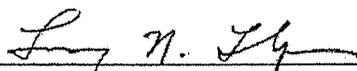
In closing, please know the members of FINE believe that the vote they took on November 20, 2012 (*to identify an optimal site for P MEC*) may rank among the most important/pragmatic steps ever taken to keep Oregon in forefront of the development of these emerging technologies.

Sincerely,

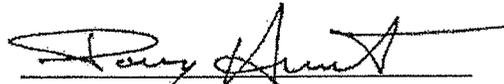
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Jane Lubchenco, Administrator, NOAA

Supplement to Report from David Allen for December 4, 2012 OPAC meeting in Tillamook

This is in follow-up to a suggestion noted near the end of the report as to “the idea of focusing on research and testing before any development (in particular commercial-scale)” with respect to a “handful” of site designations for potential MRE development.

TSP Part Five includes both a pilot project and phased development approach as alternatives for applicants to obtain adequate information and data and to measure effects. *See* subsection B.4.f.

However, there is no clear indication in TSP Part Five for applicants to submit documentation at the time of application as to any testing of device or array performance (excluding proprietary or confidential data), whether for a pilot project, phased development, or development.

Presently, there is only general mention to testing for “economic and/or technological viability” under the Department of State Lands (DSL) definition of “demonstration project.” This is a “limited duration, non-commercial activity authorized under a temporary use authorization” granted by DSL. OAR 141-140-0020(7).

In line with the policy language in subsection A.2.e. to “encourage the research and responsible development of ocean-based renewable energy sources” perhaps TSP Part Five can provide clear indication on this point. By doing so, further direction could be given to DSL and other state agencies as they proceed with rulemaking to implement changes adopted as part of TSP Part Five.