

Oregon Ocean Policy Advisory Council

DRAFT Meeting Summary

Meeting of October 9-10, 2006

Best Western Agate Beach Inn, Newport, Oregon

Executive Summary

Issues Decided/Positions Taken:

A. The Council endorsed by consensus Robin Hartmann's participation in the Oregon Solutions Process for Ocean Power Technology as a representative of OPAC.

Action Items:

OPAC Members: Submit brief biography for STAC when requested by Jay Rasmussen.

Working Groups and Chairs:

Continue to develop draft scopes of work, timelines and proposed budgets.

National Marine Sanctuary Working Group:

Conduct rapid email-based review and editing effort on the draft National Marine Sanctuary Status Report.

OPAC Staff:

Act as a rapid response clearing house to make sure that reviews and edits to the draft NMS status report are circulated to the working group as soon as is feasible.

Next Meeting:

November 27-28, 2006, in Depoe Bay, at the Community Center.

Meeting Detail

Attendance:

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

Members Present (ex officio): **Vicki McConnell** (Department of Geology and Mineral Industries); **Patty Burke/Hal Weeks** (Department of Fish & Wildlife); **Jessica Hamilton** (Governor's Office); **Dalton Hobbs** (Department of Agriculture); **Onno Husing** (Oregon

Coastal Zone Management Association); **Tim Wood/Jim Myron** (Parks & Recreation Department); **Jay Rasmussen** (Oregon Sea Grant College); **Cora Parker** (Department of Land Conservation & Development); **Jeff Kroft** (Department of State Lands); **Paul Slyman** (Department of Environmental Quality).

Members Absent: **Robert Kentta** (Oregon Coastal Indian Tribes, not yet confirmed); South Coastal County Commissioner (**seat vacant**).

Committee/Working Group Members: **Laurel Hillmann** (Oregon Parks & Recreation Department); **Justin Klure** (Oregon Department of Energy); **Ann Miles** (Federal Energy Regulatory Commission).

Invited Speakers: **Cheryl Coon** (National Audubon Society, Portland Chapter)

Staff: **Christopher Holmes** (Oregon State University, College of Oceanic and Atmospheric Sciences, National Marine Sanctuary Working Group contractors); **Greg McMurray** (Department of Land Conservation & Development); **Steve Shipsey** (Department of Justice, OPAC Counsel); **Jane Barth** (National Marine Sanctuary Working Group facilitator).

Observers (with affiliation if provided): **Virgil Moore**, **Steve Williams**, **Arlene Merems** (Oregon Department of Fish & Wildlife); **Ed Backus** (EcoTrust); **Megan Mackey** (Pacific Marine Conservation Council); **Peter Stauffer** (Surfrider Foundation); **Peg Reagan** (Conservation Leaders Network); **John Griffith** (Coos County Commissioner); **Carolyn Waldron** (Oregon Ocean); **Steve Bodnar** (Coos Bay Trawlers Association); **Lucie LaBonte** (Curry County Commissioner); **Finlay Anderson** (Longview Associates); **Walter Chuck**, **John Holloway** (RFA/Oregon Anglers); **Pat Corcoran** (Coastal Storms Initiative); **Lisa Mulcahy** (citizen); **Ben Enticknap** (Oceana); **Jan Hodder** (Oregon Institute of Marine Biology); **Mike Graybill** (South Slough National Estuarine Research Reserve); **Fran Recht** (Pacific States Marine Fisheries Commission); **Jim Golden** (Golden Marine Consultants); **Barry McPherson** (Oregon Chapter, American Fisheries Society); **Dan Waldeck** (Pacific Whiting Conservation Cooperative); **Bernie Bjork** (Lower Columbia Alliance for Sustainable Fisheries); **Melinda McComb** (Newport); **Cindy Ashy** (citizen); **Kathy Davis** (commercial fisher); **Gus Meyer** (Tillamook County Soil and Water Conservation District); **Randy Henry** (Oregon State Marine Board); **Kay Moxness** (Central Lincoln Public Utility District); and **Rob Bovett**, **Wayne Belmont** (Lincoln County).

Total recorded attendance: 64.

Meeting Minutes:

Morning Session

The meeting was brought to order by Chair Scott McMullen at 9:05 a.m.

Introductions:

The OPAC members introduced themselves and stated their affiliations.

Review and Approval of Summary of June 23, 2006, OPAC Meeting (Scott McMullen):
The council approved the last meeting's summary, with the addition of a clarification of the record concerning Coos County Commissioner John Griffith's standing nomination to OPAC as requested by Commissioner Griffith. The council accepted the motion and approved the revised summary by consensus.

Science Advice to OPAC: STAC Membership Nominations (Jay Rasmussen):
Jay announced that the STAC will have its retreat meeting on November 3, 2006, from 9 a.m. until 4 p.m. This will be the first opportunity for the group to convene, and will be facilitated by Pat Corcoran. It is a public meeting, and observers are welcome. Jay will be asking the OPAC membership for brief biographies to inform the STAC.

Update from the Governor's Office on OPAC-Related Issues (Jessica Hamilton):
Jessica reported on the *West Coast Governor's Agreement on Ocean Health*, signed by Governors Kulongoski, Gregoire and Schwarzenegger on September 18, 2006. This coast-wide initiative will allow a new look at opportunities for the states of Oregon, Washington and California to work together on ocean issues. The agreement identifies priority areas, and further specifies four issues for immediate action. The Governors' Offices will spend the next year gathering input from all sectors, and laying out a substantive program for the ensuing years. There was some discussion of the need for effective and timely coordination between OPAC and initiatives from the Governor's Office.

Update on National Marine Sanctuary Process (Scott McMullen and Jim Good):
Scott reported that during a September 27, 2006, conference call among Mike Carrier, Jessica Hamilton, Jim Good and Scott, the group had discussed a status report on the National Marine Sanctuary proposal and process. The status report would concentrate on OPAC's findings in two specific areas: fisheries issues, and governance, and be submitted to the Governor by the end of calendar year 2006.

Results of National Marine Sanctuary Working Group Meeting of October 2, 2006 (Jim Good):
Jim reported on the results of the NMS working group meeting that was delayed from September 25 to October 2 in order to incorporate discussion of the status report described above. The process for the status report begins with a first draft developed over the past week and distributed on Sunday, October 8, to OPAC members by email. Jim and the working group intend to provide at least two more opportunities for OPAC members to review and comment on drafts before meeting again in late November to approve a final status report. Jim walked through the draft report for the council.

Discussion of National Marine Sanctuary Report (Jane Barth):
Jane gave members of the council opportunity to express concerns or issues with the report as it stands. (There will also be ample opportunity for written comments over the ensuing weeks and later drafts.) Preliminary comments and discussion then followed largely in the areas of how much information OPAC has collected, the quality and level

of documentation of that information, and the tone of the report with regard to stating its findings versus making conclusions and recommendations.

There was a clear division among members of the council on the desire to make strong conclusions, versus the need, as expressed by Jessica on behalf of the Governor, to make only findings of fact in a status report. Additionally, there was recognition that conclusions would not be appropriate on this topic until a public outreach process, which though it has been promised, has not been conducted. There was some recognition that findings themselves may be expressed in strong or weak form, and that this is really a product of the tone and balance of the report.

There was also concern as to whether the draft, as it stands, accurately captures the response of the conservation community to the NMS proposal in finding that it has been almost entirely negative, because the nongovernmental conservation organizations have been saving their comments and testimony for the promised public process. Finally, there were numerous comments on the structure and content of individual sections of the draft report, and about whether the fact-based findings were supported by appropriate levels of documentation, especially concerning the accuracy of trying to make findings from the public comment already received.

Public Comment:

John Griffith (Coos County): Commissioner Griffith expressed his appreciation of the level of scrutiny the council members are giving the draft NMS status report.

Walter Chuck (RFA/Oregon Anglers): Walter commented that the California MLPA efforts at implementation resulted in inconsistent application with respect to curtailment of fishing, and recommended that Oregon not follow that lead.

Lucie LaBonte (Curry County): Commissioner LaBonte expressed her concern that marine sanctuaries would or could hold a trump card for fisheries management; the appropriate voice is through the regional fisheries management council.

Bernie Bjork (Lower Columbia Alliance for Sustainable Fisheries): Bernie is very concerned about the “mission creep” of federal conservation programs, including the National Marine Sanctuary program, and believes that federal authorities should not be extended.

Carolyn Waldron (Oregon Ocean): Carolyn addressed the topic of whether or not the conservation community has supported the national marine sanctuary proposal, and demonstrated that Oregon Ocean is on record as supporting the Governor’s vision and principles for the sanctuary proposal, while still expressing concerns about federally managed processes that would delay implementation of other serious marine conservation initiatives.

John Holloway (RFA/Oregon Anglers): John complained that the Governor’s had not discussed the West Coast Agreement on Ocean Health with Oregon’s stakeholders, and spoke to his continuing concerns about fisheries management under a possible national marine sanctuary, using the Channel Island process in California as an example.

Barry McPherson (Oregon Chapter, American Fisheries Society): Barry referred the council to an American Fisheries Society 2003 position paper on marine reserves which documents the ability of reserves to meet marine conservation goals.

Pete Stauffer (Surfrider Foundation): Pete raised the issues of mentioning the potential benefits of national marine sanctuaries in the status report, the importance of documenting social and economic factors in marine protected areas implementation, and a local effort in Newport to request DEQ reconsideration of the NPDES permit for the Georgia-Pacific Toledo outfall.

Fran Recht (Pacific States Marine Fisheries Commission): Fran spoke to area-based management and the need for OPAC's NMS report to recommend what could be a successful MPA effort, and also expressed a perspective that joint state-federal management of ocean activities is not frightening, but desirable.

Ed Backus (EcoTrust): Ed supplied the council with a reference on ocean zoning and urged OPAC to utilize modern visualization technologies to help make ocean zoning a useful reality; he also cited the success of the National Forest planning process as an analogy for adaptive management that might occur in a national marine sanctuary.

Melinda McComb (Newport): Melinda expressed her dismay that the Georgia-Pacific Toledo pulp mill was allowed to continue to discharge an effluent with a high biochemical oxygen demand into the ocean during a hypoxic period this summer, and her dissatisfaction that the NPDES permit allows a large mixing zone that she says is commonly visible as a large area of black water near shore.

Luncheon Address

Lessons Learned with Marine Protected Areas (Cheryl Coon, National Audubon Society, Portland Chapter):

Cheryl abstracted the results of a national study entitled *Lessons Learned from Recent Marine Protected Areas Designations in the United States*. She spoke on the dos and don'ts of how to designate and implement marine protected areas, by contrasting two very different MPAs: the Northwest Straits Initiative, and the Tortugas Ecological Reserve. Both of these processes were ultimately built from the bottom-up.

The report found that the key components of an effective MPA process are:

- effective leadership;
- working with and involving stakeholders;
- understanding and planning for the role of scientists and mapping; and
- providing for facilitation, including conflict management.

Cheryl also hammered home the point that successful MPA processes have been well-funded and well-staffed, as well as facilitated.

Afternoon Session

Briefing on Ocean Energy Development and the Role of the Federal Energy Regulatory Commission (Ann Miles):

Ann delivered a PowerPoint presentation that demonstrated clearly FERC's role and responsibility for energy facility siting, and especially how facilities are licensed under the FERC hydroelectric regulations. There are four independent criteria for FERC hydroelectric jurisdiction: located on a navigable waterway, occupying lands of the United States; uses water from a government dam; or affects interstate commerce. FERC

has further judged that wave energy devices fall under the definition of hydroelectric generators.

Ann spoke briefly to Preliminary Permits, which grant three years to prepare for the licensing process, and give priority of application. She then described the hydropower Integrated Licensing Process (ILP), FERC's default process, in some detail. It has two phases: pre-filing – activities that take place in order to assure that the applicant submits a complete license application; and post-filing – activities that take place in order to assess the application and fulfill all of the legal mandates, including those that are parts of the licensing and NEPA processes. Many diverse interests are typically included in a FERC licensing process. Ann also briefly described the so-called *Verdant* Order, in which FERC defined the conditions under which it would allow experimental technology to be tested outside the licensing process.

The Commission wants to be flexible, and is very interested in trying to ascertain whether the existing licensing regulations are adequate for the emerging ocean energy technologies and industry. Towards that end, they will hold a technical conference in Washington, DC, on December 6, 2006, to address questions on ocean energy environmental, financial and permitting issues.

Lincoln County Preliminary Permit Application to FERC (Terry Thompson and Wayne Belmont)):

Terry and Wayne summed up the county's philosophy in applying for a Preliminary FERC Permit for the three-mile wide Territorial Sea the length of Lincoln County. The county is very supportive of the developing technology and the industry, and hopes that Lincoln County will be one of the first locales that it is sited in Oregon. The county believes that wave energy development will offer significant local economic opportunities. It is not clear at this time how the federal and state permitting processes will incorporate the county's interests. Terry made it clear that the county is willing to work with any group to further the cause of advancing wave energy in Oregon.

Oregon Solutions Process for Gardiner Ocean Power Technology Application (Jeff Griffin):

The Oregon Solutions Process is assisting Ocean Power Technology (OPT) towards the FERC licensing process for a wave energy development offshore Gardiner, Oregon, just north of Reedsport. Keith Tymchuk (Port of Umpqua) and Senator Joanne Verger co-convened the Process on October 4, 2006. The goal of the Process is to produce a Declaration of Cooperation (i.e., a non-binding agreement) in about six months, signed by all stakeholders, that addresses all significant issues in the facility siting licensing process.

OPT plans to put one 150 kW test buoy into the water during August 2007, followed by 13 more the following summer. OPT hopes that it can accomplish these deployments under the FERC *Verdant* Order for testing new technology, and under an environmental assessment (EA) instead of a full environmental impact statement (EIS). OPT hopes ultimately to license a wave energy park of some 200 250 kW buoys at the site. Their Preliminary Permit Application is for 1 mile by 5 miles along shore, of which they plan

to use ½ mile by 3 miles for an array of buoys four wide (across shore) by fifty long (along shore).

Update on Activities of the Wave Energy Working Group (Robin Hartmann):

Robin reported on ten separate topics, showing how many separate processes and initiatives are taking place at once on this fast-moving issue. The Working Group had met on August 8, and again briefly on Monday afternoon, October 9. Some of the key events:

- Jessica delivered a memorandum to the working group asking for an OPAC member to participate in the Oregon Solutions Process, and to identify other coastal interests that should be represented in that process;
- PISCO and OSU are working on a science workshop, in February or March, to identify key ecological and biological issues for wave energy development;
- MMS is holding a public meeting on alternative energy development in Salem on Tuesday, October 17, 2006;
- the State Land Board may go to rulemaking on seabed leasing for wave energy development; and
- Douglas County is working with the state and OPT to avoid competing permit applications.

Robin then took some time to explain how Section 2 of the Territorial Sea Plan (TSP) includes procedures intended to address complex issues like the development of wave energy on the Oregon Coast. These procedures have not been used since they were written in the early 1990s. The TSP lays out Inventory and Environmental Effects guidelines, procedures for Limited Disturbances to address situations where there is no specific information, and the option of designating a Joint Review Panel of agencies to address technical issues.

Discussion ensued on many aspects of wave energy development, and the connections among all the various efforts and initiatives. Some discussion involved the respective roles of the counties and OPAC in laying out the process by which state and local interests are represented in the energy facility siting process. The counties actively seek to assert an interest in the Territorial Sea with respect wave energy planning. OPAC can accommodate this through appropriate inclusion of the county interests in the efforts of the Wave Energy Working Group as it considers various options for the state's input to FERC's facility siting regime. Other discussion involved the long-term, large-scale consideration of ocean zoning in the context of a future with many wave energy developments along the Oregon coast. OPAC agreed by consensus to endorse Robin Hartmann's participation in the Oregon Solutions Process as a representative of OPAC.

Update on Activities of the Marine Reserves Working Group (Frank Warrens):

Frank updated the council on the meetings of the Marine Reserves Working Group held on August 25 and October 9, 2006. There was consensus that the group will pick up marine reserves planning with the letter from then-Governor Kitzhaber in response to OPAC's original 2002 recommendation, but no timeline has yet been set for the two phases of implementation. The analysis of existing authorities appropriate for marine

reserve designation will be an early priority for the working group. Hal Weeks is drafting a set of key questions on implementation of a network of marine reserves for transmittal to the STAC; Jay asked that they be available in time for the STAC retreat on November 2 for STAC discussion. Frank will take the addition of new members to this working group under advisement, with an eye to balance in representation of interests and to keeping the size of the group manageable. Frank has invited Jeff Samuels, of the Oregon State Police, to advise the working group on enforcement issues. Laurel Hillmann, of the Oregon Parks and Recreation Department, has agreed to assist the working group as part-time staff.

Date, Location and Agenda Items for Next OPAC Meeting (Scott McMullen):

The next OPAC meeting will take place in Depoe Bay on November 27-28, 2006, at the Depoe Bay Community Center.

New Issues Raised by OPAC Members:

No new issues were raised by members at this OPAC meeting.

David Allen again expressed his concern over the unfilled seats, specifically the tribal and the South Coast County Commissioner seats on the council.

Jim Good announced that registration is still open for the Second Annual Heceta Head Coastal Conference in Florence on Saturday, October 28, 2006. This conference will address all of the issues now under active consideration by OPAC.

Public Comment:

John Holloway (RFA/Oregon Anglers): John stated his concerns about the implementation of marine reserves, especially in the context of what he perceives as commitment to political science instead of biological science.

Meeting adjourned by Chair Scott McMullen at 4:13 p.m.