Oregon
John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
www.oregon.gov/LCD

April 26, 2012

TO: Land Conservation and Development Commission

FROM: Paul Klarin, Marine Affairs Coordinator

SUBJECT: **Agenda Item 7, May 10-11, 2012, LCDC Meeting**

UPDATE ON THE TERRITORIAL SEA PLAN AMENDMENT PROCESS

I. SUMMARY

The department is currently working with the Ocean Policy Advisory Council (OPAC) to amend the Oregon Territorial Sea Plan (TSP). This is the second phase of an amendment process that resulted in the adoption of Part Five of the TSP by the Land Conservation and Development Commission (commission) in November of 2009. This phase will involve the adoption of maps that will designate specific areas for the development of marine renewable energy facilities and the conditions for the use of those areas as needed. The process is being conducted through the OPAC and its Territorial Sea Plan Working Group (TSPWG).

A. Type of Action or Commission Role

There is no action by the commission at this time. This is an informational presentation on the progress of the TSP amendment process by the department staff.

B. Staff Contact

If you have any questions about the Territorial Sea Plan Advisory Committee, please contact Paul Klarin, Marine Affairs Coordinator at (503) 373-0050 ext. 249 or paul.klarin@state.or.us.

II. RECOMMENDATIONS

There are no recommendations for action by the commission at this time.

III. BACKGROUND

The Governor's Executive Order No. 08-07, issued March 26, 2008, Directs State Agencies to Protect Coastal Communities in Siting Marine Reserves and Wave Energy Projects. It ordered the department to seek recommendations from the Ocean Policy Advisory Council (OPAC) concerning appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy projects. In October 2008, LCDC authorized the creation of the TSPAC with LCDC Commissioner Tim Josi as chair and approved the membership of the group at the following meeting in December.

TSPAC was created to consider and propose amendments to OAR 660, division 36 (Ocean Planning). Amendments to the Territorial Sea Plan for marine renewable energy generation facilities in state waters, were achieved, in part, with the adoption by LCDC of Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, in November 2009. Part Five did not designate specific locations in the territorial sea for renewable energy development. Section B.1 (a) addresses the siting of areas designated for those facilities in state waters by referencing maps that will be incorporated into the TSP as appendix C. That will be achieved through the process now underway which will result in additional recommendations to LCDC from OPAC and TSPAC. (http://www.oregon.gov/LCD/OCMP/Ocean_TSP.shtml)

The OPAC, under the auspices of its Territorial Sea Plan Work Group, recently concluded a series of work sessions to review the summary overlays of mapped information developed by DLCD, Oregon Department of Fish and Wildlife (ODFW) and National Oceanic and Atmospheric Administration (NOAA), to assist in the development of the draft maps. The TSPWG forwarded its report to OPAC (attachment A) on April 8.The Ocean Policy Advisory Council has now concluded its preliminary review, and has submitted a draft plan recommendation to the department and LCDC for further review by the TSPAC. The review process will commence in May 2012, and it's anticipated that the TSPAC will conduct a series of meetings over the next few months with the intention of submitting a recommendation for amending the TSP to LCDC prior to the September LCDC meeting. OPAC will meet once more prior to that meeting to formulate their final recommendation based on the work completed by the TSPAC.

IV. DEPARTMENT RECOMMENDATION

No recommendations for action by the commission at this time. The department staff is providing an informational report on the TSP process that will include several presentations.

ATTACHMENTS

Attachment A: TSPWG report to OPAC

Report from David Allen (TSPWG chair) for April 9, 2012 OPAC meeting in Newport

After the OPAC meeting last December in Astoria, the Territorial Sea Plan Working Group (TSPWG) undertook a second round of public work sessions (Feb. 2 thru March 6) in coastal and inland communities to collect further public input. Afterward, the TSPWG held a meeting on March 22 in Newport to discuss issues raised during the second round and to reach a preliminary recommendation to forward to OPAC.

The e-mails included below refer to interpretation regarding Goal 19 language and also issues as to federal approval of TSP Part Five, including any spatial or mapping component. These have been topics of discussion throughout this TSP process and, most recently, during the second round of public work sessions. There was general consensus among TSPWG that federal approval of a spatial plan for TSP Part Five was important, both from NOAA as well as FERC.

The general guidance document from NOAA/OCRM was reviewed by TSPWG in listing category types for a spatial plan for marine renewable energy (MRE) development. For each category type, classification levels for Goal 19 resources and uses were then used. These classification levels were taken from the TSP mapping informational sheet (rev. 2/08/12) used during the second round of public work sessions. It should be noted, however, that OPAC may need to take a look at and perhaps revise some of the initial classification levels for Goal 19 resources and uses as part of reaching any initial recommendation.

The following is a preliminary list of category types from the TSPWG meeting:

MRE Exclusion Zone – following NOAA requirements/guidance
Resource Conservation Zone – items in Level I that don't fit into exclusion zone
Resource Management Zone – items in Level II that don't fit into conservation zone
Resource Development Zone – items in Level III that don't fit into management zone

For next steps for the OPAC meeting, DLCD staff was asked to draft conceptual definitions for these potential areas/zones, including a list of items proposed for inclusion in each area/zone. Another discussion point was for DLCD staff to look at a possible viewshed assessment overlay (and one for perhaps ocean recreation as well) with certain screening standards applied across all non-exclusion areas/zones.

Also, TSPWG members were asked to identify language in TSP Part Five for possible review and revision depending on whether certain policy choices are made. For example, expanding and strengthening language with respect to local participation in the joint agency review team (JART), at page 4 of TSP Part Five.

Finally, DLCD staff was asked to make available for viewing at the OPAC meeting, if possible, draft mapping scenarios depicting MRE suitability areas in comparison with areas of least conflicting Goal 19 resources and uses.

-----Original Message-----
From: David N. Allen
Sent: Monday, March 26, 2012 9:28 PM
Subject: Re: RI and MA ocean plans

All -
As a FYI, Kris Wall (TSPWG /OPAC federal agency liaison) asked me to forward the following links/explanations to the full RI and MA ocean plans (see below) and also indicated, "There are differences in the approaches MA and RI took that won't translate perfectly to the Oregon process (e.g. wind focused, defining scales of energy development), but I still feel these will be useful examples of policy standards that could be developed in order to afford protection to the ecological and fishery resources and beneficial uses under consideration for Oregon's plan."

Also FYI, attached is the general guidance from NOAA/OCRM that Kris Wall went over last week and can go over at the April 9 OPAC meeting as well. In preparation for the OPAC meeting, please take a look through the RI and MA ocean plans and the attached general guidance. Much of the discussion last week centered around the question of conditions as a component of spatial planning for TSP Part Five. Thanks. --David

RI Ocean SAMP
http://www.crmc.ri.gov/samp_ocean.html
For Rhode Island, there are 11 Chapters, each generally focusing on a resource or use (e.g. ecology, fisheries, recreation, transportation). In each chapter, there is a section on "Regulatory Standards" which are the policies that apply to those resources or uses in the Chapter. In addition, Chapter 11 is a summary of Regulatory Standards from throughout the plan. However, I definitely find it useful to review each set of standards within the context of the relevant chapter.

MA Ocean Plan
http://www.mass.gov/eea/ocean-coastal-management/mass-ocean-plan/
For Massachusetts, Chapter 2 is the "Management" section, which is where I had originally taken the excerpt. I recommend reviewing this entire chapter if possible, but in particular the first part, 2-1 through 2-13. In this chapter they define "performance" and "siting standards". In addition, Massachusetts pulled out all of the policies in their Ocean Plan into Appendix 5 of a stand-alone policy guide, which can be be found here:
http://www.mass.gov/czm/plan/docs/czm_policy_guide_october2011.pdf

-----Original Message-----
From: David N. Allen
Sent: Friday, March 23, 2012 8:36 AM
Subject: FW: Goal 19 language

To: TSPWG /OPAC /TSPAC
Cc: Other Interested Parties

Near the start of the TSPWG discussion at yesterday's meeting, OPAC legal counsel had a chance to respond to the questions listed in the e-mail below with respect to language in Goal 19. After each question is the response from the meeting. Goal 19 can be accessed online at:
http://www.oregon.gov/LCD/docs/goals/goal19.pdf?ga=t

With the responses indicated below, another way of looking at the questions is that ocean renewable energy (a beneficial use under Goal 19) must not adversely affect renewable marine resources (i.e., living marine organisms) such as fish and shellfish. For other ocean uses and activities, ocean renewable energy must avoid adverse effects or operational

conflicts "to the extent possible." And, although reference to "living marine organisms" under Goal 19 does not include the term "fisheries" it does include fish and shellfish upon which fisheries is based.

On another note, nearly 40 people attended the meeting with considerable public comment given at the start. More detail about the TSPWG discussion from yesterday's meeting will be sent out later next week along with other information for the April 9 OPAC meeting. Thanks. --David

-----Original Message-----
From: David N. Allen
Sent: Tuesday, February 21, 2012 9:23 AM
Subject: Goal 19 language

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Goal 19 Implementation Requirements
1. Uses of Ocean Resources:

Subsection c.1. provides that agencies shall "protect and encourage the beneficial uses of ocean resources *** provided that such activities do not adversely affect the resources protected in subsection 1., above; avoid, to the extent possible, adverse effects on or operational conflicts with other ocean uses and activities[.]"

1) Does reference to "the beneficial uses of ocean resources" also include ocean renewable energy?

Response: Yes, provided this beneficial use (ocean renewable energy) is done in a manner consistent with what's required in subsection c.1.

2) Does reference to "subsection 1., above" mean subsection b.1.?

Response: Yes.

Subsection b.1. provides that agencies shall protect "renewable marine resources -- i.e., living marine organisms -- from adverse effects of development of non-renewable resources, uses of the ocean floor, or other actions[.]"

1) Does reference to "living marine organisms" also include fisheries/fish/shellfish as those terms are used in subsection b.4? ("organism" is defined in TSP's glossary of terms as "an individual living entity or life form")

Response: Yes, for fish and shellfish. No, for fisheries.

2) Does reference to "development of non-renewable resources, uses of the ocean floor, or other actions" include ocean renewable energy?

Response: Yes.

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