



Oregon

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TO: Land Conservation and Development Commission

FROM: Paul Klarin, Marine Affairs Coordinator

SUBJECT: **Agenda Item 2, January 24th, 2013, LCDC Meeting**

FINDINGS ON THE ADOPTION OF AN ADMINISTRATIVE RULE TO AMEND THE TERRITORIAL SEA PLAN

I. SUMMARY

Under this agenda item the Land Conservation and Development Commission (commission) will consider adopting amendments to Part Five of the Oregon Territorial Sea Plan (TSP) (Attachment A). The commission adopted Part Five, Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, in November of 2009. This amendment will incorporate maps into the TSP that designate specific marine resources and use areas within the territorial sea based on the delineation of Goal 19 Ocean Resources within each specific geographic area. The amendment will also establish standards to be applied by state agencies when reviewing proprietary authorizations and permits for the development of marine renewable energy facilities within each area. The public review and advisory process, used by the department in the formulation of this plan amendment, was conducted through the joint efforts of the Ocean Policy Advisory Council (OPAC) and the LCDC Territorial Sea Plan Advisory Committee (TSPAC).

The Territorial Sea Plan review requirements are prescribed under ORS 196.471(1). The statute requires the commission to review TSP amendments recommended by OPAC and make findings that (a) the amendments carry out the policies of ORS 196.405 to 196.515 (the Oregon Ocean Resources Management Act), and (b) are consistent with applicable statewide planning goals, emphasizing the coastal goals, prior to adopting the proposed amendments as part of the plan. In this instance, Goal 19 Ocean Resources, OAR 660-015-0010(4), contains the applicable policies and implementation requirements.

A. Type of Action or Commission Role

The Department of Land Conservation and Development (department) recommends that the commission adopt the rule to amend the Territorial Sea Plan Part Five: Use of the Territorial Sea

for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, and find that the amendments are consistent with (a) the applicable statewide planning goals, with an emphasis on the coastal goals and specifically Goal 19 Ocean Resources, and (b) carry out the policies under ORS 196.405 to 196.515 for Oregon Ocean Resources Management.

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

The department recommends the commission adopt an amendment of the Territorial Sea Plan that will clarify the state and federal review process for marine renewable energy (MRE) facility development, describe the state agency review process for MRE projects, and establish regulatory review standards for determining the impacts of that development on specific Goal 19 ocean resources. The amendment will incorporate maps that delineate areas to which the standards apply based on an analysis of the marine resources and uses present.

A detailed description of the proposed amendments is included in the analysis section of this report, below. In brief summary, the amendments to Part Five will incorporate a spatial plan map, by reference, as the Map Designations in Appendix B. The plan map delineates the territorial sea into different area designations based on the concentration and importance of the marine resources and uses present within them. The area designations being incorporated into the plan map are: the Renewable Energy Permit Areas (REPA); Renewable Energy Facility Suitability Study Areas (REFSSA); Renewable Energy Exclusion Areas (REEA); Proprietary Use Management Areas (PUMA); Resources and Uses Conservation Areas (RUCA); and Resources and Uses Management Areas (REMA); which are defined in Attachment B. In addition to these spatially explicit resources and uses areas, the amended plan incorporates separate map overlays covering the entire territorial sea, to which specific project review standards will be applied for visual and recreational use resources.

The department recommends the following four areas be incorporated into the Map Designations in Appendix B as Renewable Energy Facility Suitability Study Areas (REFSSA):

- 1) Camp Rilea site, modified to account for the fiber optic cable corridor underlying the PUMA along the northern boundary;
- 2) Nestucca site, modified to avoid the mouth of the Nestucca estuary and to avoid the high value fishing grounds. The department recommends that the use of this area be restricted to technologies that are sub-surface or have limited visual resource impact;
- 3) Reedsport site for which Ocean Power Technology (OPT) holds a FERC Preliminary Permit for a 50MW project;

4) Reedsport Lakeside site.

The department also recommends the commission consider including the North Newport site as a REFSSA. Consideration of this site is pending the decision by the Northwest National Marine Renewable Energy Center (NNMREC) to select the location of the Pacific Marine Energy Center (PMEC), which will be located in federal waters near either Reedsport or Newport.

III. BACKGROUND

Governor Kulongoski's March 26, 2008 Executive Order No. 08-07, Directing State Agencies to Protect Coastal Communities in Siting Marine Reserves and Wave Energy Projects, ordered the department to seek recommendations from OPAC concerning appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy projects. In October 2008, the commission authorized the creation of the TSPAC, with Commissioner Tim Josi as chair, and approved the membership of the group at the December meeting that followed. TSPAC was created to consider and propose amendments to OAR 660, division 36 (Ocean Planning) and to amend the Territorial Sea Plan for marine renewable energy generation facilities in state waters. This was 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 Section B.1 (a) established the siting of areas designated for MRE facilities in state waters by referencing maps that will be incorporated into Part Five as Appendix B, by this amendment.

The Advisory and Public Review Processes:

The public advisory and review processes that were conducted over the past three years as part of the state's effort to amend the Territorial Sea Plan have been complex, iterative, comprehensive, and thorough in scope and content. As part of these efforts, the department developed and applied technical tools that were used throughout the process, including Oregon MarineMap, an interactive mapping tool which is used to compile, display and distribute spatial data and information. Beginning in 2010, through the spring of 2012, the OPAC, through its Territorial Sea Plan Work Group (TSPWG), conducted regular public meetings as it formulated a draft plan framework. In addition to its own meetings, the TSPWG conducted two separate series of public review work sessions at various coastal and inland locations, to inform and gather public input on the summary overlays of mapped data and information developed by DLCD, ODFW, NOAA, researchers, technical consultants, local advisory organizations and several NGO's.

The information and public input gathered from this process was used by OPAC to develop an initial set of draft resources and uses inventory maps and plan options. The OPAC used that information to formulate a draft plan framework along with a set of recommendations which it forwarded to the department for further review by the TSPAC, which commenced its activities in May 2012. TSPAC then conducted another series of public review sessions in November after which the advisory committee concluded their efforts with a recommendation for amending the

TSP at their final December meeting. OPAC met twice more before formulating their final recommendation to LCDC, discussed below, predicated on the work completed by the TSPAC.

During the period between 2009 and 2012, staff made formal presentations or met informally with local advisory groups and committees, as well as city councils and county commissions, to discuss the progress of the TSP amendment and collect feedback. Staff also attended and made presentations at numerous workshops, group meetings and conferences.

Video and digital recordings were taken at the OPAC, TSPWG, TSPAC and public review work sessions, which are available from the department. A special TSP public comment email function was built into the <http://www.OregonOcean.info> website to allow for online comments to be submitted. Staff has provided a report that summarizes the public review process for both OPAC and TSPAC, their working groups, subcommittees, and the public work sessions that were used to collect public input on the plan framework, area designations and specific sites that were in consideration. Included in the report are the meeting dates and attendance, as well as a compilation of the public comments that have been collected since the inception of the review process (Attachment C). In addition, the department will be conducting a hearing to collect public comment on January 22nd, at the Newport Public Library. The hearings officer will provide a report of that hearing and the comments that were collected as hard copy documents for this meeting.

The Territorial Sea Plan Advisory Committee Recommendations

Since the TSPAC began meeting again in May of 2012, the commission replaced several members of the original committee who left for various reasons, and added several more new members representing additional interests. TSPAC followed up on the basic planning framework that was produced by OPAC, by organizing itself into six subcommittees to complete tasks related to fisheries, ecological, recreational, visual aesthetic, and energy resources, as well as revisions to Part Five. See Attachment D for a TSPAC subcommittee memo. The subcommittees were primarily tasked with drafting the regulatory review standards text that agencies will apply to the areas designated in the plan map and incorporated into Part Five as the project review standards. Presentations, materials, and documents used by TSPAC and subcommittees, including recordings and summary reports from the meetings, are available at <http://www.oregon.gov/LCD/Pages/TerrSeaPlanAdComm.aspx>. Staff has produced a report summarizing the recommendations forwarded to the department by TSPAC for the commission's consideration (Attachment E).

Many of the TSPAC recommendations have already been incorporated into the revised draft version of Part Five (Attachment A). Those revisions are detailed below in the analysis. TSPAC recommended a spatial plan that delineates the territorial sea into a series of defined areas based on the marine resources and uses within them, with specific project review standards that would be applied by state agencies to protect the resources and uses within those areas. In addition to the basic plan framework and project review standards, the TSPAC recommended that the plan incorporate various limitations to ensure that MRE development is constrained from expanding too quickly and is limited in scope in its initial phases. TSPAC made several general recommendations about the objectives of the plan, including that it should be flexible in nature

and contain up to 4 or 5 REFSSA's. This was to be achieved by establishing larger plan areas wherein the marine renewable energy companies would be able to seek locations that are suitable for a variety of technologies that require differing ranges of physical conditions to operate. The TSPAC recommended that the plan limit the areas designated as Renewable Energy Facility Suitability Study Areas (REFSSA) to 5% of the territorial sea, and that there be a cap of 3% on the amount of area within the territorial sea that could be developed with facilities and structures, including the cable. TSPAC recommended that the preferred development sites, or REFSSA's, be distributed among the areas associated with the three deep water ports of the Columbia River, Newport and Coos Bay. TSPAC recommended there be an initial cap of 1\3 build-out of MRE projects within the territorial sea within the first seven years for each of the 3 deep water port areas. This coincides with their recommendation that the plan have an automatic periodic review trigger built into it at 7 years or 1% build-out, whichever comes first. TSPAC made no decision to recommend a limit on the number of REFSSA that could be sited per port. The limitation on initial build-out during the first 7 years has been incorporated into the draft version of Part Five in consideration.

In terms of the specific sites, the TSPAC recommended that the OPT Reedsport 50 MW project site (FERC preliminary permit P-13666) and the Camp Rilea MRE Study Area site be included in the plan as REFSSA's, and count as 2 of the 4 or 5 sites that would be included in the total. TSPAC did not select any other specific sites as REFSSA, but did rank their level of support for the remaining candidate sites that were under consideration. The sites were ranked from highest level of support to lowest (low number shows a higher level of support and vice versa) as follows; Camp Rilea (46), Lakeside (66), Reedsport Nearshore (97), Langlois (106), Nestucca (108), Newport (115), Gold Beach (129) and Netarts (160).

The recommendations of TSPAC are taken into consideration in the department's final recommendation to the commission on the amendment of Part Five of the Territorial Sea Plan.

The Ocean Policy Advisory Council Recommendation

The OPAC public process that took place over the past three years is described above, and in the chronology of public meetings provided in Attachment C. OPAC has made recommendations for revisions to Part Five and for the sites that should be incorporated into the plan map as REFSSA. Generally, OPAC approved of the amendments to Part Five recommended by TSPAC, and reflected in the version provided as Attachment A. OPAC also recommended revisions to Part Five include: major modifications to the JART membership and process; the addition of a new section for applicant financial assurance requirements, changes to the section on pilot projects and phased development, an update of the section for the Northwest National Marine Renewable Energy Center (NNMREC); and the addition of new definitions to the glossary. OPAC also approved of the basic planning framework and area map designations as recommended by TSPAC.

In terms of spatial and siting recommendations, OPAC also recommended the concept of flexible siting and a cap of 5% of territorial sea area for REFSSA. OPAC recommended limiting total MRE build-out to 2% of territorial sea. OPAC also recommended that MRE build-out

be distributed on an equal-third basis for each of the deep water ports of Astoria, Newport, and Coos Bay.

OPAC recommended 3 sites be selected for REFSSA as follows: a revised Camp Rilea site with the western boundary adjusted to 1 nm rather than 3 nm; a revised nearshore Reedsport site with the boundary adjusted to conform to the adjacent RUMA, and the Lakeside site unchanged. OPAC recommended that the Netarts, Pacific City/Nestucca, and Langlois sites not be considered for REFSSA. No specific decision was made for the remaining sites at Gold Beach, OPT-Reedsport 50 MW, Nearshore Reedsport, North Newport, and Camp Rilea, which left these for the commission to consider. OPAC made no recommendation on the total number of REFSSA that should be selected for inclusion in the plan, or their distribution among major port areas. OPAC supported the TSPAC recommendation for establishing an initial cap of 1\3 build-out of MRE projects within the territorial sea within the first seven years for each of the 3 deep water port areas.

OPAC has provided a letter to the commission summarizing its recommendations for the amendment to Part Five, as well as other related concerns and recommendations. The recommendations of OPAC are taken into consideration in the department's final recommendation to the commission on the amendment of Part Five of the Territorial Sea Plan.

I. ANALYSIS OF THE PROPOSED RULE TO AMEND THE TERRITORIAL SEA PLAN

The proposed rule represents the second phase to amend the Territorial Sea Plan for siting and regulating marine renewable energy facilities development. This amendment will consist of revisions to Part Five, and the incorporation of a maps which will identify areas within the territorial sea that are appropriate for renewable energy development and the standards that state agencies would apply to determine the impacts of that development. Pursuant to ORS 196.485, upon adoption and incorporation into the plan, state agencies must apply the new requirements of the Territorial Sea Plan. Further, upon federal approval, the department will apply Part Five as an "enforceable policy" when conducting federal consistency reviews pursuant to 15 CFR Part 930) and provisions of the Coastal Zone Management Act. (16 USC §§ 1451 to 1465).

The department considered the TSPAC, OPAC and state agency recommendations when finalizing the proposed amendments to the TSP. There was general agreement among the advisory bodies and state agencies on the proposed revisions to the text of Part Five, and with respect to the types of spatial constraints or sideboards that would be placed on renewable energy development. There was also agreement on the concept of a plan that would provide for flexible siting, and to some degree, the distribution of MRE development among the deep water ports.

This analysis of the proposed Part Five amendments is divided into the three sections that are being revised or added to the existing plan. The first will address changes to existing sections of Part Five. This includes additions and revisions to the Part Five Appendix A: Definitions and Terms and the footnotes, both of which contain references for the specific statutory and rule text

that are used in the document. That is followed by a summary of the Special Resource and Use Review Standards, which establishes the project review standards that will be applied by state agencies to project applications. The last section addresses the map designations for resources and uses and related inventory data and information that will be incorporated as Appendix B. The proposed amended Part Five with revisions in strike-out and underline is in Attachment A.

Preamble:

The preamble to Part Five establishes the purpose for Part Five and some general objectives. A sentence was added to the second paragraph of the preamble describing the state's preference for taking a precautionary approach to marine renewable energy development. This objective is further detailed below under subsection B.4.f: Pilot and Phased Development Projects.

Section (B) Implementation Requirements

Extensive revisions were made to the terminology in subsections B.1 and B.2 to clarify the regulatory relationship of the state and federal government agencies and the application of the federal consistency regulations under 15 CFR Part 930. These changes were the result of a collaborative discussion between the NOAA, DLCD and the Oregon Department of Justice. Many of the revisions and inclusions requested by NOAA are captured in the endnotes.

Joint Agency Review Team (JART)

The JART is the state and local agency staff team that will review project applications to determine if the information provided is sufficient and complete, and apply that information to determine if that information meets the applicable standards and screening criteria for the project site. Stakeholders continued to have concerns about how the JART would function and who would be on the team. Subsection B.3, JART Project Review Process and Coordination, was extensively revised to expand, clarify and redefine the function of the Joint Agency Review Team. The JART membership list has been enumerated and expanded to ensure the participation of affected local jurisdictions, ports and federally recognized coastal tribes. This subsection stipulates that DSL may invite local organizations or advisory committees to participate when the team deliberates on specific resource or use questions, and may acquire outside technical expertise to assist in the review as needed.

A new subsection (B.3.f) was added, titled JART Roles and Responsibilities. This subsection clarifies the role of the Department of State Lands (DSL) in establishing the JART, and DSL's use of the JART recommendations in the review of applications for MRE projects under their proprietary authorization rules.

Resource and Use Inventory and Effects Evaluation and Special Resource and Use Review Standards

The title of Section B.4 has been revised to indicate that this section will now contain the project review standards. New text was added to clarify that this part of the plan contains the enforceable policies and necessary data and information requirements that the state will use for federal consistency purposes. At the request of NOAA, Appendix D: Enforceable Policies Subject to Federal Consistency, has been added to Part Five, so that state and federal agencies have a summary list of the enforceable policies that the department will apply when making a

consistency determination. Subsection B.4 was also updated to properly reference the JART involvement in the review process in keeping with the revisions to that process discussed above.

Pilot and Phased Development Projects

The Subsection B.4.f, formerly titled Insufficient / Incomplete Information, has been revised and is now titled Pilot and Phased Development Projects. This was done to clarify the intent of this subsection, which is to provide for the systematic use of pilot projects and phased development to gather and analyze information and data in order to determine the potential impacts of a specific project on affected marine resources and uses. This section applies the objective related to the precautionary approach that has been inserted in the Part Five preamble. Additional text was inserted at the request of NOAA to clarify the circumstances and conditions under which the department will apply federal consistency for MRE projects, and how the state may apply the CZMA authority to recommend a pilot project or phased development be conducted. Much of the remaining text of the former subsection remains the same.

Special Resources and Use Review Standards

Special Resources and Use Review Standards (Subsection, B.4.g), have been added containing the review standards for evaluating the impacts of a proposed MRE project on the affected resources and uses at a specific site. The review standards, as applied to the designated areas, provide an opportunity to MRE developers to seek areas appropriate for their particular type of technology in most areas within the territorial sea. They do so by establishing a sliding scale of regulatory standards that were devised to provide a higher level of protection for areas where there are concentrations of significant or important marine resources and uses, thereby directing development toward areas with lesser concentration.

The standards were developed by the TSPAC through a deliberative public review subcommittee process, and approved by the full TSPAC for inclusion in Part Five. The OPAC also reviewed and approved the inclusion of the standards in its recommendation.

As originally conceived by OPAC, the standards address the potential impacts from a proposed MRE project to fisheries use, ecological resources, recreation resources, and visual resources, as predicated by the implementation requirements of Goal 19 Ocean Resources. Each set of standards applies to a resource and use area delineated in the maps being incorporated as Appendix B. In addition to the specific resource and use standards that apply to projects potentially located in a particular resource or use area, a set of general standards were developed that will be applied to any project in any area. This subsection also contains a requirement for the state agencies to use the best available maps and data, consider new information as it becomes available, and apply their best science and professional judgment.

The general standards are consistent with similar requirements that are applied by federal agencies under their regulatory authority. The general standards are intended to ensure that MRE projects consider alternative deployment sites, minimize activities during critical time periods for species migration, and minimize disturbances to other resources and uses during construction and installation.

The Fisheries Use Protection Standards (subsection B.4.g.2): contain a set of general standards that apply to projects in any of the designated areas it is allowed that are designed to minimize compaction of fishing effort, the reduction in fishing grounds, navigational hazards and distribution of projects in any a particular local port or fishing sector area. Two special terms that are used in the fisheries standards, “adverse effect” and “presumptive exclusion,” are defined in the subsection. Since the same terms are used somewhat differently in the Ecological Standards section, it was necessary to also include the different definitions for those terms in Appendix A: Definition and Terms. Included under the definition for Important, Sensitive, or Unique Area (ISU) in Appendix A. are the specific buffer distances that would apply to certain ISU resources.

The fisheries use standards apply to development proposed in the Resources and Uses Conservation Areas (RUCA), Resources and Uses Management Areas (RUMA), and the Renewable Energy Facility Suitability Areas (REFSSA). They were designed to create a regulatory screen geared to provide a level of protection commensurate with the concentration of Goal 19 resources and uses in a specific area as defined by the maps.

- RUCA: the standard for a RUCA presumptively excludes MRE development, but allows it if it can be demonstrated that the project will have no reasonably foreseeable adverse effect on areas important to fisheries and there is no practicable alternative site.
- RUMA: the standard allows development if it can be demonstrated that the project will have no significant adverse effect on areas important to fisheries.
- REFSSA: this standard is designed to be most favorable for development, and applies the resource inventory and effects evaluation requirements listed under Section B.4, and the general standards as applicable.

The Ecological Resource Protection Standards (subsection B.4.g.3): also contains a section to define terms specifically for use in the standard including adverse effect, presumptive exclusion, and Important, Sensitive, or Unique Area (ISU), and ecological resources of concern. The latter two terms define areas and resources of high ecological value to which the standards apply.

- RUCA: As in the fisheries standard, there is a presumptive exclusion for MRE development in the RUCA. However, it specifically applies to the ISU areas only, and again, it may be overcome by a demonstration that there are no practicable alternative sites outside an ISU area and the project will have no reasonably foreseeable adverse effect on the ISU located at the site. The RUCA also require no significant adverse effect on foraging areas and ecological resources of concern.
- RUMA: the ecological standard in the RUMA also requires no significant adverse effect on critical foraging areas, areas with ecological resources of concern, along with the ISU standard as applied in the RUCA.
- REFSSA: the standard for these areas requires no significant adverse effect on ecological resources of concern and the ISU protection standard.

Recreational Resources Standards (Subsection B.4.g.4): Unlike the fisheries and ecological resources, the recreational resource standard applies in all areas, and is based on an inventory map of recreational usage that is applied as a coastwide overlay to the territorial sea. The standard requires that an MRE project have no significant adverse effect on areas of high use or importance. An adverse effect occurs when access is denied or impeded; health or safety is impacted; or there is a reasonably foreseeable significant impact on the natural environment upon which the recreation community depends.

Visual Resource Protection Standards (subsection B.4.g.5): This set of standards is the most complex. Like the recreational resource standard, the visual resource standard applies to all projects uniformly throughout the territorial sea. It also relies on an existing overlay produced by an inventory of 144 viewsheds along the ocean shore. Most of the viewsheds are located in state and federal parks or managed areas, but many are also in areas that are managed as public access sites in city or county jurisdictions. There are several viewsheds in the ownership and management of nonprofit organizations that are maintained for public use. A classification system has been developed based on a set of objective criteria related to the unique setting, aesthetic qualities and physical properties of a site. Each site is assigned to a class, and each class has its own visual subordination standard designed to maintain the character of the viewshed. Each viewshed has a series of arcs associated with the foreground, middle ground, and background views. The standards are generally based on an evaluation of the level of contrast the proposed development has with the natural environment at those varying distances. The standard takes into account the fact that it is not possible to avoid or mitigate contrast since it will be a required feature of most developments in order to ensure navigational safety.

The class system ranges from I through IV, with viewsheds in Class I being afforded the highest level of protection as it allows for a very low level of change to the seascape. Each class thereafter, has a lesser level of protection, and would allow a project to be more visible to the casual observer. The contrast evaluation required to apply the standards will be conducted through a visual simulation of the project from the affected viewsheds. It is likely that multiple viewsheds will be affected by most MRE projects, and the standards for the highest class of the affected viewsheds will be applied. A total of 75 (58%) of viewsheds are in Class I, and another 54 (38%) are in Class II. Together the Class I and II viewshed arcs cover 99% of the territorial sea, which means that a fairly high level of viewshed protection is applied to most areas.

The visual resource standard also includes the project review criteria that must be applied when conducting and analyzing the visual simulation. These include such factors as distance and angle of observation, project size and scale, and light and atmospheric conditions, among others.

The department finds that the proposed changes to the text portions of the Part Five of the Territorial Sea Plan are consistent with the ORS 196.405 to ORS 415, and statewide planning goals, with emphasis on Goal 19 Ocean Resources.

PUMA Standards: This standard allows developers to seek areas for MRE projects where there are other authorized uses or management plans in place. The applicant must obtain the approval of the current user and meet the underlying resources and uses standards that apply to the area.

Spatial Maps and Area Designations

Part Five contains a reference under Section B.1.a, Siting: areas designated for renewable energy facilities development in State Waters: “Pursuant to the requirements for amending the Territorial Sea Plan under ORS 196.471, to carry out the policies of the Oregon Ocean Resources Management Act and consistent with the statewide planning goals, the Land Conservation and Development Commission has designated areas of the territorial sea appropriate for the development of renewable energy facilities (See Map Designations in Appendix B) and established the review standards for projects within those designated areas (See Section B.4).”ⁱ

These maps constitute the spatial section of the plan, delineating the territorial sea into a series of “areas,” each defined by the occurrence and concentration of marine resources and uses as prescribed by the Goal 19 Ocean Resources Implementation Requirements. The Addendum to the maps provides the area definitions and descriptions. As described in the section on standards above, each area has a set of resource and use review standards that will be applied by state agencies to assess the potential impacts a specific project may have on a location within the area. The maps referred to as Appendix B, along with the resource and use inventory data used to produce them, are maintained by the department in a server under the administration of the department’s Coastal Division. They are available for review and distribution on Oregon’s ocean information website at (<http://www.OregonOcean.info>) and as GIS files from the department. The maps, along with the resource and use inventory data upon which they are based, are all incorporated into the amended Territorial Sea Plan by reference upon adoption of Part Five by the commission. In total, the Map Designations in Appendix B will include the statewide territorial sea plan map of the designated areas, a set of resource and use inventory maps, and the map addendum. The map products will be made available by county, in various scales, for easier use and viewing.

The commission, upon adopting the plan map, will designate specific areas for potential development based on the type of area and applicable standards. The Renewable Energy Facility Suitability Study Areas, which are subject to the least restrictive standards, were the primary focus of the public review process conducted by OPAC and TSPAC. Through that process, many locations were considered as potential REFSSA, though not all of locations were uniformly consistent with the resource and use inventory data for the area. In some cases, REFSSA were considered in areas where the resource inventory maps indicated a higher level of ecological concern or a high concentration of fishing effort. Concerns for conflicts with ecological resources, specifically salmon bearing estuaries and rocky seafloor habitat, were addressed through additional analysis and the reconfiguration of sites where the resources of concern were located.

The fisheries resource use maps for several of the sites that are being considered do indicate they are subject to high levels of fishing effort. However, the potential REFSSA that are being considered for these locations are relatively small in comparison to the total area that has been delineated as high effort fishing grounds, and several of those potential REFSSA sites were initiated by the local fishing communities. There was general support for the use of the fishing effort maps during the initial planning process, but the accuracy and utility of the maps was

challenged by members of local fishing communities when the state agency's spatial analysis resulted in the identification of areas for MRE development that they did not support. In several instances alternative sites were identified by the local fishing communities as potential REFSSA.

The department, in consultation with ODFW, finds that if several of these areas are to be made available for potential development as REFSSA, the application of the general fisheries and ecological review standards, and the required consultations between the developer, state agencies, local fishing and port interests, are sufficient to ensure that Goal 19 resources will be protected in a manner consistent with the goal implementation requirements and that there will be minimal adverse impact on ecological resources or fishing uses.

The department has considered the recommendations and decisions of TSPAC and OPAC regarding the specific sites that were in consideration as REFSSA. Both TSPAC and OPAC supported a plan which would limit the area dedicated to REFSSA at 5% of the territorial sea. However, the 3 sites recommended by TSPAC, (Lakeside, OPT Reedsport, and Camp Rilea) amount to less than 2% of the territorial sea. The sites recommended by OPAC (Lakeside, Reedsport nearshore revised and Camp Rilea revised) amount to an area equivalent to slightly more than 1% of the total territorial sea area. Both TSPAC and OPAC ranked the other sites that were in consideration but left it to the commission to decide if any of them should be made REFSSA. The OPAC and TSPAC recommendations for REFSSA are also problematic in that the Reedsport OPT site does not allow for any other company to use the area, and the Camp Rilea site is under the control and jurisdiction of the Oregon Military Department, who would select the companies and technologies that could use the area. In neither area would MRE developers have open access to a REFSSA that is not already encumbered and controlled.

The commission may choose to apply specific conditions for the type of development that will be allowed to occur within a specific REFSSA. The Addendum to the map will be amended to include the list of sites selected as REFSSA, and any specific conditions that will apply to a specific REFSSA will be incorporated into the map designation and applied by state agencies when projects are proposed for that site. The plan map legend will also contain that information. In addition to the site specific conditions that may be applied to an area, the Addendum may also contain any other conditions or constraints that the commission chooses to apply as implementation requirements for the plan. These conditions may include a limit on the total area within the territorial sea that may be developed with MRE facilities. This type of limitation or "cap" has been recommended by TSPAC and OPAC, and would otherwise be applied as a trigger for periodic review of the plan under TSP Part Five Section E: Plan Review.

TSPAC and OPAC recommended a distribution of MRE project build-out among the three deep-water ports of the Columbia River, Newport and Coos Bay area. The department concludes that this will be achieved during the initial period of development through the periodic review requirement that is being incorporated into the Part Five text, which limits project build-out during the first seven years to 1% of the territorial sea, and distributes that among the three ports. The recommendation can be revisited, if necessary, during periodic review.

The department recommends four areas be incorporated into the Map Designations in Appendix B as Renewable Energy Facility Suitability Study Areas (REFSSA):

1) Camp Rilea: This site has been modified to account for the PUMA along the northern boundary. It is a high use fisheries area and would not normally have met the criteria for identifying a prospective REFSSA. However, the department concludes that there are special and unique circumstances for providing the Oregon Military Department (OMD) with an opportunity to consider the feasibility of MRE development at Camp Rilea. One of the missions of Camp Rilea is to provide regional emergency services. Energy independence and energy security are operational imperatives for both the primary and secondary missions of the base. Renewable energy sources are important alternatives to the electrical grid and fossil fuels for the camp's backup generator. Camp Rilea requires renewable energy to meet its mission including disaster recovery in the event that windstorms, earthquakes, or flooding disrupts the electrical grid. In addition to energy security, energy independence and disaster resilience, the envisioned Camp Rilea ocean renewable energy project promotes the OMD's interest in two critical areas: achieving Army Net Zero goals and assisting with pursuit of the state's alternative energy goals.

Camp Rilea is uniquely positioned to facilitate off-shore wave energy as it already has a Safety Distance Zone (SDZ) management area within the territorial sea and in federal waters off-shore to facilitate the camp's on-site live-fire ranges. This SDZ management area provides a compatible co-use with potential wave energy devices as there are already management devices off-shore to facilitate monitoring of ocean traffic in this area during live-fire exercises. In addition, Camp Rilea's operations and infrastructure provide accessibility of the electrical grid with favorable site characteristics plus the unique capabilities of the Oregon Military Department (OMD) in planning, facilities management, engineering personnel, and environmental staff.

Camp Rilea is also investigating the feasibility for MRE development in federal waters outside the territorial sea. That siting process will be conducted by the federal Bureau of Ocean Energy Management. It may be several years before pilot projects are conducted to determine the locations and respective technologies that best meet the base's needs.

Total REFSSA area: 11 sq. mi. (8.3 nautical)

2) Nestucca: This site has been modified to avoid the mouth of the Nestucca estuary and to reduce the impact on the adjacent high effort fishing grounds. This site was one of few areas in consideration as REFSSA that would be amenable to the potential development of certain MRE technologies that require a near-shore location and flat bottom. The department concludes that the site, as modified, addresses the concerns expressed by local communities, as well as environmental and fishing interests who are concerned about the proximity to high value resources and uses. The department recommends that the use of this area be restricted to technologies that are sub-surface or have limited visual resource impact due to the areas proximity to several communities and Class I Visual Resource sites.

Total REFFSA area: 2.1 sq. mi. (1.6 nautical)

3) Reedsport (OPT): This is the site for which Ocean Power Technology holds a FERC Preliminary Permit for a 50MW project. Imbedded in the area is the REPA site for which OPT has a FERC license to develop up to 10 buoys. The area has been the focus of considerable investment by OPT, as well as studies and research funded by the Oregon Wave Energy Trust. Though the resources and uses inventory data indicates it is a high effort fishing area, especially for Dungeness crab, the area proposed as a REFSSA is small by comparison to the total crab fishery in the area.

Total REFSSA area: 5.25 sq. mi. (4 nautical)

4) Reedsport Lakeside: This site was brought forward to TSPAC as an alternative location for a REFSSA by the Southern Oregon Ocean Resources Coalition which represents the fishing communities from Reedsport, Charleston, Coos Bay and Bandon. It was originally offered as an alternative to a proposed location in the Langlois area, which is not being recommended as a REFSSA. The site is also located in an area that the resources and uses inventory maps indicate is a high effort fishing ground, but like the other sites, it is small and its use as a REFSSA would not cause an significant adverse impact to the total crab or other fisheries in the vicinity.

Total REFSSA area: 3.95 sq. mi. (3 nautical)

Supplementary Site Recommendation

The department recommends that LCDC also consider one additional location at North Newport as a potential REFSSA, pending the outcome of the selection process being conducted by the Northwest National Marine Renewable Energy Center (NNMREC) to select the site of the Pacific Marine Energy Center (PMEC), which will be located just outside and adjacent to the territorial sea, in federal jurisdiction. NNMREC is scheduled to make the decision about whether to locate PMEC near Reedsport or Newport prior to the commission meeting. The distribution of REFSSA among the deep water ports is supported by OPAC, TSPAC and the state agencies. No other sites are in consideration as REFSSA within the radius of Newport. Establishing a REFSSA at the North Newport location would apply the concept of distribution. Should NNMREC decide to locate PMEC near Reedsport, the commission should consider selecting the North Newport location as a REFSSA. The North Newport site is adjacent to the existing NNMREC location and would benefit from the public process and environmental study work that has been conducted to establish NNMREC and to install the Ocean Sentinel device.

Total REFSSA area: 4.24 sq. mi. (3.2 nautical)

Plan Area Designations Summary: The total area occupied by the four recommended REFSSA comprises 22.3 sq. mi. (17 nautical), which is less than 2% of the territorial sea, and well below the 5% threshold that OPAC, TSPAC and the state agencies recommended as the maximum area that should be dedicated to REFSSA. It is also below the TSPAC, OPAC and state agency recommended thresholds for the maximum area that should be eventually developed with projects. With the exception of Camp Rilea, where the choice of technology will be controlled by the Oregon Military Department, the limited size of the individual REFSSA being recommended for inclusion in the plan is not consistent with the TSPAC, OPAC and state

agency recommendations that the plan allow for flexible siting, in that they are too small to accommodate alternative locations for siting commercial projects.

The revised plan standards do allow for siting MRE development in the RUMA, RUCA and PUMA based on the project review standards that apply to the specific location. The state agencies anticipate that companies may be able find locations within some of those respective areas that are suitable for their type of technology. Only by locating MRE development within areas other than REFSSA will the plan provide the opportunity that the industry needs, and that OPAC, TSPAC and the state agencies have recommended for flexible siting. The final plan with the inclusion of the proposed REFSSA (22.3 sq. mi. 17 nautical 2%), will result in areas that comprise the following size and percent of the total territorial sea, which measures 1260 sq. mi. or 951 nautical). RUCA (900 sq. mi. 680 nautical and 72%), RUMA (137 sq. mi. 104 nautical and 11%), REEA (130 sq. mi. 98 nautical and 10%), PUMA (68 sq. mi. 51 nautical and 5%), and REPA (2 sq. mi. 1.5 nautical and 0%). The final plan map is provided as Attachment G.

Upon adoption of an area to become a REFSSA by the commission, the department will revise the plan map to delineate the areas accordingly, and amend the Map Designation addendum to list the different areas and incorporate any limitations or conditions for development that are applied to them. The final plan map and area designations will be incorporated into the plan as Appendix B under the Implementation Requirements at Subsection B.1.a, where the plan addresses siting marine renewable energy facilities in state water.

II. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The commission is required to review OPAC recommended amendments to the Territorial Sea Plan under ORS 196.471(1). The commission reviews the recommended amendments and makes findings that the recommendation carries out the policies of the Oregon Ocean Resource Management Act and is consistent with the applicable statewide planning goals. After making such findings, ORS 196.471(2) requires the commission to adopt the proposed amendments. In addition the commission is authorized by ORS 197.045 to “perform other functions required to carry out ORS chapters 195, 196 and 197”; and by ORS 197.090, to coordinate “land conservation and development functions with other government entities”.

The department submitted public notices and fiscal impact statements for proposed rules to the Secretary of State, legislative leaders and selected committee chairpersons, and the public on January 1, 2013.

The department scheduled rulemaking hearings for this matter of its own accord and not in response to a request for a rulemaking hearing under ORS 183.335(3)(a). Because the Part Five rulemaking affects or applies to only a limited geographic area (the state’s coastal zone), the Department of Justice recommended that the department hold a hearing within that geographic area. The department held the public hearing in Newport on January 22nd, 2013, and the hearings officer report of those comments will be provided as a hand carry document to the commission.

The proposed rule amends OAR chapter 660, division 36, Ocean Planning, by adopting a new section numbered 660-036-0006. The text of the proposed rule will amend Part Five of the State of Oregon Territorial Sea Plan by reference. (See text at Attachment F)

VI. SUMMARY

The proposed amendment to the Territorial Sea Plan, Part Five Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, is consistent with the policies and implementation requirements of Goal 19 Ocean Resources, the Territorial Sea Plan, and ORS 196.405 to 196.515. In addition, the review process conducted by the OPAC, TSPAC and the state agencies ensured that the requirements of Part Five, as amended, will be compatible with other state and federal agency authorities and regulatory requirements that apply to the permitting, licensing and leasing authorizations needed to approve the development and use of renewable energy facilities in the territorial sea.

VII. RECOMMENDATION

The department recommends that the commission adopt the rule to amend Part Five of the Territorial Sea Plan and make a finding that the amendments are consistent with the applicable statewide planning goals, with an emphasis on the coastal goals and specifically Goal 19 Ocean Resources, and carry out the policies under ORS 196.405 to ORS 196.515 for Oregon Ocean Resources Management.

VIII. POSSIBLE MOTIONS

Recommended motion:

I move that the commission find that the Territorial Sea Plan Part Five amendment and plan map area designation adoption recommended by the department carries out the policies of the Oregon Ocean Resource Management Act and is consistent with applicable statewide planning goals; and further that Territorial Sea Plan Part Five, as amended, be adopted as part of the Oregon Coastal Management Program.

Alternative Motion:

I move that the commission find that the Territorial Sea Plan Part Five amendment and plan map area designation adoption recommended by the department does not carry out the policies of the Oregon Ocean Resource Management Act; is not consistent with applicable statewide planning goals; or both, and further that Territorial Sea Plan Part Five be returned to the department and OPAC for revision.

ATTACHMENTS

- A. Territorial Sea Plan Part Five (as amended)
- B. Addendum to Appendix B Map Area Designations
- C. Public Review Process and Public Comment Summary Report
- D. TSPAC Subcommittee memo
- E. TSPAC Recommendation Report
- F. Proposed rule OAR 660-036-0005
- G. TSP plan map (as recommended)

ⁱ ORS 196.471, entitled “Territorial Sea Plan review requirements, provides in part:

“(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.”