

Territorial Sea Plan Working Group Workshop Public Comment

May 23, 2011

Astoria, OR

#1

Susan Allen, Director, OurOcean, "Oceana is one of our member groups and many of us learned valuable lessons over the last four years working on marine reserves. I'm excited by the fact that there seems to be opportunities in which the fleet can inform the state discussion by supplying information, somewhere between individual boat harvest and what the state needs to make decisions regarding statewide planning goal 19. I know our coalition is looking forward to moving ahead thoughtfully and cooperatively on this issue."

#2

Peter Huhtala, Commissioner of Clatsop County, "Our comments deal primarily with process. First, I would like to point out that we appreciate you coming to Astoria. I'm sensing that we need to think about additional ways to synthesize local input and help to bring public comment into this process. There are a lot of stakeholders who don't realize that they need to be involved in this, real estate community, hospitality, property owners, etc. and we want to help garner their input. Further comment (see letter below).

Clatsop County

May 11, 2011

TO: Interested Parties

FROM: Clatsop County Board of Commissioners

SUBJECT: Review of Oregon Territorial Sea Plan (OTSP)

800 Exchange St., Suite 310
Astoria, Oregon 97103

Clatsop County has experience with reviewing large energy projects and this expertise can be focused on development in the ocean to eliminate delay and provide a thorough yet efficient review process. The Oregon Territorial Sea Plan (OTSP) should be changed to provide clarity so that the local process for projects is absolutely clear. In addition, the State should be aware of and support the review requirements by the County. This will help eliminate confusion.

The OTSP does not mention the area inside the County's jurisdiction that extends one marine league from the shore. There should be coordination of projects and opportunities to comment by the County that are clearly stated. These public processes should mirror the land use planning citizen involvement processes that provide time for notice, formal public comment, a decision and an appeal. The County will through Goal 19 and additions to the County Development code and Standards identify the information that would be required of applicants developing in this near shore County zone. The OTSP should support this level of County involvement.

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The Board appreciates the need to be good partners with the State in expediting these projects. But fast review and decisions should not come at the expense of notice, public involvement and representation of the local interests. We respect that there is some tension regarding 'state control' versus 'local control' but this should be anticipated in project review processes. These tensions can be minimized through respectful processes at both the local and state levels with bright lines of who should consider what criteria.

Comments on Oregon Territorial Sea Plan

Page 30. b. Counties. “Seven Oregon counties border the Pacific Ocean: Curry, Coos, Douglas, Lane, Lincoln, Tillamook, and Clatsop. Notwithstanding the fact that county boundaries and jurisdiction extend westward to the limit of state water, Oregon law [ORS 201.370(2)] specifically delegates the planning function for the Territorial Sea to the Ocean Policy Advisory council and the Territorial Sea Plan. ~~Like coastal cities, coastal counties can play a part in the management of some rock shore site where local land-use plans and ordinance can be used to help carry out this rock shore strategy.~~ The jurisdiction of some Oregon counties extends one marine league from the shoreline into the territorial sea. Counties are mandated by ORS 197.175 to plan within the County’s jurisdiction. Activities within the County’s jurisdiction that affect the County are within the County’s purview to plan, subject to the limitations under state law.

The Council is required to consult with local government on ocean developments. These mandatory consultation provisions are included in Part Two, making Resource Use Decisions.”

Page 32. c. Carrying out the Mandatory and Recommended Provisions of the Plan, paragraph 5. “Local governments also may play a role in carrying out the Territorial Sea Plan. ~~particularly in rocky shore areas.~~ The Council is specifically authorized to recommend changes to both local comprehensive plan and ordinances to help the local plans become consistent with the Territorial Sea Plan. However, there are no statutory requirements for local government to change comprehensive plans, ordinances or land-use regulations. By state law, however, counties are mandated by ORS 197.175 to plan within the County’s jurisdiction.

Page 36 b. Local Governments. The legislature was concerned that local government comprehensive plans and the Territorial Sea Plan are compatible.

Page 60. c. Joint Review Panel (JRP) Membership. 2. Limitations.

(d) shall include a representative appointed by the Board of County Commissioners if the project is within a County’s jurisdiction or off of a county’s coast.

g. Public Meetings, Public Participation. Add 3.) JRP meetings shall be scheduled and held within the affected county’s jurisdiction.

Page 63. Part Two: Making Resource Use Decisions C. Local Government Consultation

Comment: This page has some problems regarding the structure of local government and the relationship with the State. The first section states: “The purpose of the consultation process is to ensure that the (Ocean) plan and the Territorial Sea Plan are compatible with the comprehensive plans of adjacent coastal counties and cities.” Page 63. 1. Context.

Then the section continues under 3. Mandatory Policies. a. Purpose “Major ocean developments can have significant effects, even if secondary. Affected local government’s only role in the approval of such offshore actions is to provide comment. This can be frustrating to local governments when the approving state or federal agency neither acknowledges nor explains its disagreement with received comments. Consequently, another purpose of the mandatory consultation process could be to raise the level of state and federal agencies’ responses to received comments from local governments. This would not be a veto authority, but only an elevation of the current consultation process.” (Emphasis by the County.)

If the County and State approved comprehensive plan identifies placement of some large projects in the County’s territory, the County shall have veto authority over locating inappropriate uses in certain locations. For example, within the County’s jurisdiction the County should have the authority to not allow placement of large developments off the beach, within the County’s territory. Examples would be off-shore development within the County’s jurisdiction at Cannon Beach, Seaside, Gearhart or Warrenton. Likewise through a planning process, the County should be able to identify where these large facilities should be located within the jurisdiction. This would provide clarity for developers of these facilities and future property owners as well. The Territorial Sea Plan currently allows for compatibility.

Page 64. new c. For the purposes of ‘local consultation process’ local governments shall have up to 150 days (ORS197.763) to consider a major ocean development activity. This time shall be provided in order to review the project, hold hearings, and formulate input for consideration by the Joint Review Panel, state agencies, and federal agencies. The local government shall be provided information and consider all impacts of the development as further defined in local code. The local government would consider issuing a land use compatibility statement (LUCS) as a result of the hearing process. The LUCS would be based on the on-shore impacts as identified by the County; the economic impact and other impacts could be divided into items that must be mitigated to advisory items that are informing the State Project Review process.

Page 64. c. Eligible Local Governments. 1.) “Compatible or incompatible with specific provisions in the local comprehensive plan applicable to land-use decisions within the local government’s land-use planning jurisdiction; OR

2.) Contrary or beneficial to the interests of the community; that is, would have secondary or indirect adverse or beneficial effects which are not covered by the local comprehensive plan.”

All of this is implicit in expressing the need for local governments to have comprehensive plan and code provisions to consider when developing a land use compatibility statement for these projects.

Page 67. ORS 201.370(2) is confusing as mentioned on this page and elsewhere in the document. Plan compatibility regarding only the on-shore impacts does not address the economic impacts that require a review of the location and other territorial sea issues. This may need additional explanation particularly as it relates to those counties that have boundaries one marine league from the shoreline.

Page 68. ORS 469.503 is actually now ORS 469.504. As the County has learned through recent processes the Energy Facility Siting Council has some authority, but the CZMA require a LUCS for sizable projects to proceed. There should be clarity regarding those projects in the Territorial Sea the County can comment on (not visual, not tied to land, not creating noise) and those projects with on-shore impacts that the County can regulate with a LUCS requirement.

Page 71 under Financial Realism there is a dangling two words that should be removed.

Page 78. This section on Rocky Shores Management Strategy needs to be updated. This could be removed to a technical appendix. It is way too specific for a general planning document.

Page 181 b. Communication and coordination. The County is being informed of these projects if they are near shore and certainly if they come on shore. It would seem prudent if there are agreements to advise the County and record those agreements so that there is a public record.

Page 185 3. Project Review Process and Coordination on page 186 “DSL shall require that an applicant provides documentation verifying their communication and coordination efforts with local communities, interest groups, and advisory committees. Those efforts shall at a minimum, include information on the proposed project operation protocols, response to emergencies and procedures for on-going communication as specified in section C. (Operation Plan Development), below.”

This direction implies some sort of formal review process by the County that would be explicit and detailed in the local comprehensive plan and development code. State agencies will need to provide time and resources for

the local community review, as well as an appeal process through the channels provided. The local government shall identify many of the criteria for evaluation in this section in the local plan so that the input from the local area could be complete. If the local government identifies outright use locations with the state's cooperation, this could be in the form of an application and check-off that would mirror the state's process and could be at the same time.

Page 195. Agreements: These are a concern and should be included in the review process with the local government. Who speaks for what group is a big issue on the Coast? With County involvement the groups could be organized and represented by the elected authority of the County.

Page 200 number 15. This section clearly suggests the County should define any concerns it may have in code prior to review. This would clarify for the applicant that which needs to be addressed.

#3

Brian Petersen, Commercial Fisherman, "Dungeness crab is Oregon's highest value fishery and economically important to Oregon and the coastal area. As we saw from the presentation, the rocky areas are already going to be off limits from the wave energy sites under Goal

19 and that leaves the sandy bottom in the Territorial Sea. And that is the area where we crab. I can tell you that the territorial sea is very small when comes to the amount of coast and I'd imagine that there has been a crab pot on every bit of sand at one point or another, and there probably will be again. It's just that aggressive and it's that important to the crab fisherman to find ground that hasn't been fished. We can see some real conflicts with the wave energy farms and the local crab fisheries. And you realize that already with your port meetings and interactions with fisheries. I can't imagine a wave energy farm where those devices are going to stay where they are placed. At one time or another, some of them are going to come ashore and there is going to be problems. Our ocean, on the Pacific is just savage at times and my crab gear strings blow up almost every year. Sometimes 200-300 pots will blow up and move 40-50 miles. What happens when the gear moves into a farm, because you can't stop them from moving? How would we go about going in there and getting them? Would we be sued or what? We see some savage conditions on the coast. I know that if these wave energy farms come we are going to end up with some of these things ending up on the beach. And the 40 ton anchors that they want to deploy to hold these things down, what happens when the buoys go away or the project fails? These anchors are going to be there forever. I agree 100% that if you can incorporate wave energy into jetties, that would be a win-win for everyone. Otherwise the wave energy farms are going to be a serious conflict with the crab fishermen."

#4

Susan Allen, Director, OurOcean, TSPAC, "OurOcean is a statewide coalition working for sustainable and responsible ocean planning, including marine reserves. I think that the most important thing to focus on is what I saw happening on the revision of the TSP that led to chapter five. That was very educational and what ended up happening was that conservation groups and fishermen saw that we had more in common and ended up offering amendments together because of statewide planning goal 19. Our group is very excited to continue working on this deliberative process. I wanted to offer our ability to partner with the state and with other specific entities in data collection or obtaining additional information that better ensures that the state can look at all of the data necessary to provide a more comprehensive understanding of the territorial sea which is managed in the public trust. So we all share the responsibility for how it is managed and look forward to rolling up our sleeves to help. To ensure that both the territorial sea plan working groups and the territorial sea plan advisory committee move forward together, at key junctures it might make

sense to co convene both planning bodies to make sure that we keep everyone together systematically as we digest this information. I would hate to see you move forward and have folks parachute in at the last minute raising questions about data. I would respectfully ask you consider that. There are many of us that would like to help this pre process. I am especially interested in how the data layers are going to be put together and synthesized and I look forward to learning with you. Thank you."

#5

Rick Williams, OWET, Oregon citizen, career mariner, "I'm a founding board member of the Oregon Wave Energy Trust. About 5 years ago the Oregon Economic Development Department, through the Oregon Innovation Council put out a call for emerging industries. There were some 21 submissions, through an exhaustive competitive process looking at existing industries, emerging industries, and research initiatives, called Signature Research Centers. Wave energy was competitively selected as Oregon's most promising emerging industry. Both for the resource but also for job development. The wave resource in Oregon is very good; the grid 430 mega watts of excess capacity and the loads are along the coast. One of the transmission problems in Oregon is that the generation is on the east side of the Cascades and a lot of the load is on the West side, creating a transmission imbalance. It turned out that wave energy in theory is a good emerging industry. So the Oregon Wave Energy Trust was formed as a public private partnership, and our mission is responsible development of wave energy. Recently in a unanimous board meeting, we confirmed that we support the territorial sea planning process and we look forward to participating. OWET formed an industry advisory group to provide a one stop shop for wave energy developers. OWET funded part of the effort to get the fishermen's input into this process through the fishing intensity mapping and we are very pleased with how that is progressing. We also recently authorized to have an equivalent effort to evaluate the wave energy industry needs. There are a wide range of devices and many of them have different needs, but in the industry we think that there are some shared needs that we can articulate. As a chair of the Industry Advisory group for OWET, we all realize we all have a lot to learn. There are information gaps about how small devices and small arrays are going to work and we fully support the phased development that is written into TSP chapter 5. As far as shared needs, all of the industry members are going to need access for offshore support vessels, 20-23' draft, so we all need to be close to deepwater ports, to keep jobs in Oregon. Particularly, during the early stages when there is no revenue. This is an early stage industry. We

all need to be close to an accessible grid connection, if it's on top of a cliff that's a problem. Also, we are looking forward to working with fishermen and we are bringing in machines that have been proven in Europe in very extreme wave conditions and these machines have proved themselves to stay in place in rough seas. Finally as a citizen, Oregon has come out against nuclear, oil and gas, and coal; I think we need to figure out what we are for. To date, renewable energy has been something that we are for. Wave energy is less intermittent than wind and it's dispatchable and approach base load power. So this is a very viable technology to provide our energy needs as long as we do it in responsible manner."