

## **A Citizen's Guide to the Territorial Sea Plan Amendment Process**

Department of Land Conservation and Development Coastal Management Program  
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The State of Oregon, with the assistance of a wide range of citizens, communities, and other organizations, is amending its Territorial Sea Plan. After several years of effort the process is at a crucial stage that requires even greater informed feedback from the public.

### **What is the Territorial Sea Plan?**

The 1991 Oregon Legislature amended ORS chapter 196 to establish the Ocean Policy Advisory Council (OPAC) made up of a variety of ocean stakeholders, local governments, and state agencies, and charged it with providing the Governor and state agencies with policy advice on ocean matters. The legislation gave the Department of Land Conservation and Development (DLCD), which includes the state's federally-approved coastal management program, primary responsibility for ocean planning and providing assistance to OPAC. One of OPAC's basic duties was to prepare a Territorial Sea Plan (TSP) for managing the resources and activities in the state's territorial sea from 0-3 nautical miles. The initial version of the TSP was completed in 1994, providing detailed guidance to state and federal agencies in managing uses within Oregon's territorial sea. OPAC did not address many ocean-resource management issues through the initial plan, but was given the ability to amend the TSP when necessary to deal with new concerns as they occurred. The plan can be found on the department's website at:

[http://www.oregon.gov/LCD/OCMP/Ocean\\_TSP.shtml](http://www.oregon.gov/LCD/OCMP/Ocean_TSP.shtml).

### **Why is the Plan being amended?**

The need to amend the TSP arose in 2007 when a number of wave energy companies submitted preliminary permit applications to the Federal Energy Regulatory Commission (FERC) to develop energy production facilities within ocean fishing areas off the Oregon coast. At the same time, a system of marine reserves was being proposed for the territorial sea. The resulting high degree of concern in coastal communities and among the fishing industry culminated in a meeting between coastal legislators, fishing industry representatives and Governor Kulongoski. On March 26, 2008, the governor issued Executive Order No. 08-07 directing agencies to "Protect Coastal Communities in Siting Marine Reserves and Wave Energy Projects", and DLCD to "seek recommendations from OPAC concerning appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy siting projects."

On that same day, the State of Oregon and FERC signed a Memorandum of Understanding (MOU) to "coordinate the procedures and schedules for review of wave energy projects in the Territorial Sea of Oregon and to ensure that there is a coordinated review of proposed wave energy projects that is responsive to environmental, economic, and cultural concerns while providing a timely, stable, and predictable means for developers of such projects to seek necessary approvals". In the MOU, FERC agreed to "consider the extent to which the proposed project is consistent with the Oregon plan" when issuing a permit or license and to "consider any terms and conditions that are recommended by Oregon under section (10)(a)(3) of the FPA [Federal Power Act] to ensure consistency with the Oregon Plan". So it became important for Oregon to complete the plan directed by the Governor.

### **What has been done so far?**

**Phase I:** The first step was to create a new chapter for the TSP for regulating and managing ocean renewable energy, and for collecting data and information for siting projects. Phase I of this new chapter, which includes policies, review and evaluation standards, coordination process, and operational plan requirements for ocean renewable energy development, was completed in November 2009 when the Oregon Land Conservation and Development Commission (LCDC) adopted Part Five of the Territorial Sea Plan for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities. Phase I was accomplished through the recommendations of OPAC and LCDC's Territorial Sea Plan Advisory Committee.

### **What is being done now?**

**Phase II:** The second phase is centered on a public process to conduct a spatial analysis of existing ocean uses and ecological resources to identify and designate specific areas within the territorial sea that may be appropriate for renewable energy development. This process will be aided by the use of digital data that can be used in a computer to create map overlays and analysis of different types of mapped information. The first step is to map the resources and uses that must be protected according to Goal 19 Ocean Resources and the Territorial Sea Plan, which are: areas that are important to the biological diversity and functional integrity of the marine ecosystem; important marine habitat; and areas important to fisheries, both recreational and commercial. In addition, existing beneficial uses such as navigation, food production, recreation, scientific research, aesthetic enjoyment and other uses of the seafloor need to be mapped and considered. Maps of resources and uses will be used in numerous community meetings to help to create new maps showing where ocean renewable energy sites might or might not be appropriate. In the end, these maps will be incorporated into the TSP.

### **Who is doing the work?**

DLCD is leading this effort along with the OPAC and other state agencies with authority to manage the state's ocean resources but is doing so with a great deal of input and assistance from the general public, fishermen, coastal communities, and other interested parties. The Phase II process is being guided by the OPAC Territorial Sea Plan Working Group and the LCDC Territorial Sea Plan Advisory Committee, both of which will conduct a series of public meetings and workshops to review maps and analyze the various alternatives and options for specific areas. Information about those events will be posted on the OPAC website, and at <http://www.OregonOcean.info>.

### **What type of information is being used?**

DLCD has been working with fishermen, scientists, and others to collect a variety of data needed for the public spatial planning work of Phase II. Data projects include:

*Fishing Effort Maps:* The Territorial Sea Plan and Goal 19 Ocean Resources require state agencies to protect areas important to fisheries, including commercial, charter and recreational for different sectors and ports. To apply this protection through the planning process, the state must be able to locate these areas spatially using data derived and contributed by fishermen and fishing communities. These data are being acquired through a series of projects conducted by Ecotrust, a non-profit research and consulting organization, working with coastal port fisheries groups. This effort was initiated by DLCD in late 2008 through a pilot project with the Southern Oregon Ocean Resources

Coalition (SOORC) in Coos Bay. This work was facilitated by the Oregon Coastal Zone Management Association (OCZMA) through a contract from DLCD using federal Coastal Zone Management §309 funds. Subsequent work with other fisheries groups was supported with funds from the Oregon Wave Energy Trust (OWET) and Packard Foundation. All the work with fishermen used the methodology and protocols prescribed by the DLCD based on the successful SOORC project. Those protocols were specifically designed to protect the confidentiality of the data from individual fishers while allowing that data to be compiled into aggregate map overlays representing the combined level of effort for each port.

*Marine Ecosystem Maps:* The DLCD is working with Oregon Department of Fish and Wildlife (ODFW) to inventory and acquire the data about areas important for the protection of marine ecosystem function, diversity and marine habitat. This work is being funded by a federal Coastal Zone Management §309 grant from DLCD. ODFW will compile the relevant data from state and federal resource agencies and other sources such as regional research programs and universities.

*Seafloor Mapping:* In 2009, the state legislature appropriated \$1 million in unused insurance settlement funds from the *New Carissa* shipwreck to the Department of State Lands to conduct seafloor mapping. That investment was matched by \$4 million from NOAA and the mapping work was conducted through a collaborative effort with Oregon State University. The seafloor mapping data will provide detailed information on the bathymetry and geologic makeup of the territorial sea. By the end of 2010, approximately 50% of the state's territorial sea had been mapped with current funds. Additional federal funds are being sought to complete the mapping.

*Recreational Use Survey:* The Oregon Chapter of the Surfrider Foundation worked with Ecotrust to conduct research to identify and locate non-fishing recreational activities, such as ocean sports, whale watching, and other beach related uses.

*Existing Beneficial Uses:* Technical staff at DLCD are working with a variety of data providers to develop map overlays of existing uses in the territorial sea including navigation channels and aids, dredge material disposal sites, telecommunication cables, pipelines and outfalls. The DLCD is also supporting a project to map the growing number of operational scientific instrumentation, such as transmission cables, data nodes, and other facilities, that have been placed in the ocean to support scientific research and monitoring programs.

*Multi Purpose Marine Cadastre:* A Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and NOAA Coastal Services Center regional-scale spatial database that includes jurisdictional boundaries, marine habitat, seafloor, existing uses and other data layers for the outer continental shelf. See: <http://www.marinecadastre.gov/default.aspx>.

**What are the standards that guide the process?**

Statewide Planning Goal 19 Ocean Resources establishes the basic policies and requirements that state agencies must follow when making decisions about the use of the state's territorial sea. The purpose of Goal 19 is "to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations". To achieve that objective, Goal 19 requires that state and federal agencies must take actions that give a higher priority to the protection of renewable marine resources – i.e., living marine organisms – than to the development of non-renewable ocean resources. The implementation requirements of Goal 19 direct state agencies to protect specific renewable marine resources, including the marine ecosystem and areas important to fisheries, and require a number of factors to be balanced when determining areas suitable for ocean renewable energy development.

**How is the process being conducted and how can the public participate?**

In Phase I, OPAC created a Territorial Sea Plan Working Group (TSPWG) to develop recommendations for the TSP amendment. The TSPWG has designed a public involvement and review process for Phase II that will involve many public meetings in communities from Astoria to Brookings as well as some non-coastal locations. Meetings are scheduled for the spring and summer of 2011, after which the TSPWG will present its findings and options to OPAC for consideration. OPAC will then prepare a draft plan amendment and submit it to the LCDC for formal adoption. The LCDC will then ask its Territorial Sea Plan Advisory Committee (TSPAC), also formed during Phase I, to conduct public meetings to review the OPAC findings and draft plan amendment, and to develop a set of recommendations or options. All of the OPAC /TSPWG and LCDC /TSPAC meetings will be open to the public and input from interested parties and citizens will be encouraged throughout the process.

**What will the outcome of the process be and when will it be concluded?**

The LCDC will use the OPAC and TSPAC recommendations to produce a series of maps and other information for inclusion in the TSP. Those maps will have two functions. First, they will identify resources, areas and uses that need to be protected or considered when state and federal agencies are making decisions to allow a new use of the territorial sea. Second they will designate areas where ocean renewable energy development may occur, and under what conditions.

**How to keep informed on the process and where to find more information:**

The DLCD has created a website to provide a calendar of events and meetings and provide information being used or produced at those meetings. See <http://www.OregonOcean.info>.

In addition, DLCD and Ecotrust have developed an interactive on-line mapping system called Oregon MarineMap for use during the public review process. It is an easy-to-use tool that allows anyone to visualize and analyze a variety of marine spatial data. See <http://oregon.marinemap.org/>

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## How you can participate in and track the progress of the Territorial Sea Plan process

*The purpose of the Ocean Policy Advisory Council (OPAC) Territorial Sea Plan Working Group sessions is to share information and collect public input that will be used by OPAC to develop a draft recommendation for locating renewable energy development in Oregon's territorial sea (0-3 nautical miles).*

There will be many opportunities for you to participate in this planning process and a variety of ways to submit your ideas, concerns, and responses about how the plan is being developed. All comments are welcome. You may be concerned with state policies used to guide the planning process. You may want to provide information or know more about a particular area or location. Or you may want to provide input on the various types of data and maps used in developing the plan. All of these comments will be useful in assisting OPAC and its Territorial Sea Plan (TSP) Working Group, and the Land Conservation and Development Commission (LCDC) and its TSP Advisory Committee, in their deliberations about planning options.

### **ATTEND AND PARTICIPATE IN A PUBLIC MEETING**

The most direct way to be involved is by attending and participating in any of the meetings listed below that will be held during the TSP planning process. At any and all of these meetings you will have an opportunity to provide comments, either verbally or in writing, to the working group, council, committee, or commission conducting the meeting.

- **OPAC TSP Working Group**

The OPAC TSP Working Group will be conducting a series of work sessions in coastal communities and some non-coastal locations over the next several months where the public is invited to learn about the TSP planning process and review the information that is being used to develop the draft plan. If you attend the work sessions, you will have an opportunity at each meeting to provide the working group with input about the policies, process, and information being used to develop the draft plan. The TSP Working Group will conduct the work sessions in two rounds; one in late spring (2011) and the second in late summer through early fall (2011). At the end of the work sessions, the TSP Working Group will forward a proposed draft plan to OPAC for its review. The meeting dates and locations for the first round of work sessions are listed below and can also be found at:

<http://www.OregonOcean.info>. (Coos Bay area 4/21; Brookings and Port Orford 4/29; Newport 5/10; Garibaldi and Astoria 5/23; Salem 6/03.)

- **Ocean Policy Advisory Council**

After the TSP Working Group concludes its work sessions, it will forward a proposed draft plan to OPAC, which will review the plan and send a draft recommendation to the LCDC. OPAC plays a key coordination role on behalf of local governments, with two elected county officials and one coastal city official as members. OPAC will take public comment during its meetings in order to prepare a draft recommendation to the LCDC. OPAC member and contact information, along with meeting materials, are posted on:

<http://www.oregon.gov/LCD/OPAC/index.shtml> or <http://www.OregonOcean.info>

- **LCDC TSP Advisory Committee**

The LCDC is required to formally adopt the proposed amendment into the Territorial Sea Plan by administrative rule. Once the LCDC receives the draft recommendation from OPAC, likely in the fall of 2011, it will convene the TSP Advisory Committee to hold public meetings, gather additional input from the public and all interested parties, and provide a recommendation on the proposed plan to the Commission. Meetings of the TSP Advisory Committee will be open to the public. LCDC must also ensure that local governments are included in this rule-making process. You can track the meetings at:

<http://www.oregon.gov/LCD/TerrSeaPlanAdComm.shtml> or <http://www.OregonOcean.info>

- **LCDC Rule Adoption**

By law, the LCDC is required to hold its own public hearings on the proposed plan, both on the coast and at the Commission meeting. These will be additional opportunities, likely in early 2012, for members of the public, local governments, and interested parties to provide input and comments on the proposed plan. The LCDC is required to adopt findings that specify the plan is compatible with Statewide Planning Goal 19 (Ocean Resources) and with local government comprehensive plans.

## **CONTACT US DIRECTLY**

To facilitate the collection of public input at any stage of the TSP planning process, the Department of Land Conservation and Development (DLCD) has set up a special public comment e-mail address at: [TSP.comments@state.or.us](mailto:TSP.comments@state.or.us)

In addition, you may contact the state agency staff that work with OPAC and the LCDC:

Paul Klarin (DLCD)	<a href="mailto:paul.klarin@state.or.us">paul.klarin@state.or.us</a>	(503) 373-0050 ext. 249
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## **GO ONLINE**

We are taking advantage of the Internet to help you stay abreast of information and provide several ways for you to submit comments on the TSP planning process.

- We post meeting schedules, locations, and information on <http://www.OregonOcean.info>. A map function on this site allows you to find the planning grid cell number for any location.
- An online comment form is located at: <http://www.oregonocean.info/TSPcomments>
- For maps and information about specific ocean areas go to Oregon MarineMap at <http://oregon.marinemap.org/> where you will find a wide variety of mapped information available for viewing and analyzing via a grid system of one-mile-square cells, each with a unique number.
- You can send an e-mail to [TSP.comments@state.or.us](mailto:TSP.comments@state.or.us) with any general comments, or with the grid cell number and information you want to submit about a particular location.

## **Local Governments and Ocean Renewable Energy Development**

In addition to participating in the upcoming TSP planning process, coastal local governments may also want to review their comprehensive plans and ordinances, with an eye toward the time when an ocean renewable energy developer may seek approval for siting part of its operation on-shore, thereby requiring local land use approvals.

Local government land use regulations are an important part of the state's approval process for projects in the coastal zone that require a state or federal permit. An applicant for a state or federal permit is required to certify that the project is consistent with local land use regulations. This will be the case for on-shore portions of ocean renewable energy projects.

DLCD Coastal Field Services representatives Dave Perry (south coast: [dave.perry@state.or.us](mailto:dave.perry@state.or.us)) and Matt Spangler (north coast: [matt.spangler@state.or.us](mailto:matt.spangler@state.or.us)) are available to assist local governments in assessing their situation to determine what amendments may be needed to their comprehensive plans and ordinances to better account for ocean renewable energy development.