

# OREGON OCEAN POLICY ADVISORY COUNCIL

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August 26, 2008

Governor Ted Kulongoski  
State Capitol Building  
900 Court Street NE  
Salem, OR 97301

Re: OPAC Comments -- MMS Proposed Wave Energy Rules

Dear Governor Kulongoski:

Thank you for your continued support of the Ocean Policy Advisory Council (OPAC) in developing recommended amendments to the Territorial Sea Plan (TSP) for siting wave energy projects. This is an important effort for both the state and local stakeholders, which are well-represented on OPAC. And, as shown by proposed wave energy rules from the Minerals Management Service (MMS), it is a timely effort as well.

Along those lines, at its August 19, 2008 meeting in Garibaldi, OPAC requested that we forward comments on the MMS proposed rules for your consideration and inclusion as an attachment to the state's response. The following is a list of issues of concern discussed at the OPAC meeting and the TSP working group meeting the day before.

**Stakeholder involvement:** The proposed rules refer to early coordination with the state and local governments as an expectation. However, it is not mandatory for the applicant to do so, nor is there a process provided by MMS for that coordination.

OPAC recommends that MMS develop language requiring pre-lease sale coordination. This effort should be a precursor to development of a site assessment plan (SAP), which is the initial action requiring a NEPA assessment and CZMA consistency determination. This effort should also include mandatory consultation with advisory committees authorized under county commissions to assist in addressing wave energy development.

OPAC further recommends that MMS adopt the use of a settlement agreement

type process, like that used by FERC, to ensure an opportunity for early stakeholder involvement and compatibility with the TSP and other regulatory programs.

**Consistency with TSP:** The state should ask MMS to consider the spatial allocation of uses prescribed in the TSP in the selection of areas considered for lease sale. Because the state has not yet amended the TSP to designate those use areas, the state should ask MMS to temporarily delay initiating the commercial lease acquisition process and to only consider issuing the short-term limited lease (5-year period) for site assessment and technology testing purposes. The state should also consider asking MMS to enter into a memorandum of understanding (MOU), like the state's MOU with FERC, to memorialize that process until the TSP has been amended.

**Bonding clarification:** The proposed rules are not clear on how bonding will be scaled-up to cover financial and liability needs for a fully-expanded commercial facility. This is particularly important with respect to potential costs of clean-up and recovery should the facility suffer damage. OPAC recommends that MMS develop language to address bonding for all stages of wave energy projects.

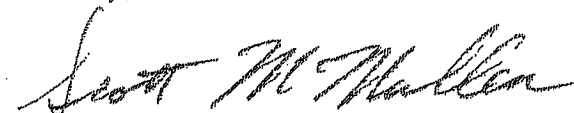
**Adaptive management:** The proposed rules do not directly invoke the concept of adaptive management as a means of addressing potential unforeseen impacts or changes to the operation of the facility over the term of the lease. OPAC recommends that MMS develop language for adaptive management measures that would address potential unforeseen impacts or operational changes.

**Recovery plan:** The proposed rules do not require commercial lease applicants to incorporate a clean-up response and recovery plan in the construction and operations plan (COP), except for reference to a general description of operating procedures in case of emergency. OPAC recommends that MMS develop language requiring a plan generally analogous to the oil spill and hazardous material plans required of ships and port facilities. That plan should include a timeframe for clean-up and recovery.

**Disagreements:** The proposed rules do not include a process for the state or other stakeholders to address or remedy disagreements over the approval of the SAP or COP, other than the normal review. This is particularly important where a right-of-way easement associated with a commercial lease crosses the state's territorial sea. OPAC recommends that MMS develop language to include such a process.

Thank you, again, for your support of OPAC and its work on wave energy and other ocean policy issues.

Sincerely,



Scott McMullen, Chair  
Ocean Policy Advisory Council

David Allen and Paul Klarin, Co-chairs  
OPAC Territorial Sea Plan Working Group