

# **OPAC Territorial Sea Plan Working Group Meeting**

## **Draft Meeting Summary**

Wednesday, February 11, 2009, 12-4 pm  
Board of Commissioners Meeting Room  
Lincoln County Courthouse  
225 West Olive Street, Room 108  
Newport, Oregon 97365

### **Members Present:**

Kaety Hildenbrand	Paul Klarin	James Good
David Allen	Scott McMullen	Terry Thompson
Laurel Hillmann	Robin Hartmann	Fred Sickler
Jeff Kroft	Onno Husing	

### **By Teleconference:**

<b>Members:</b>	Brad Pettinger	Cathy Tortorici
<b>Others:</b>	Jessica Hamilton (Gov. Office)	Steve Shipsey (counsel)

### **Presenters:**

Greg McMurray

### **Audience:**

Andy Lanier	Cristen Don	Juna Hickner
Anna Pakenham	Gus Gates	John Meyer
Wayne Belmont	Walter Chuck	Loren Goddard
Polly Hampton	Rick Williams	Herb Goblirsch
Lorinda De Haan	Greg McMurray	John Lavrakes
Len Bergstein	Justin Klure	

### **Welcome and Introductions:**

Co-chair David Allen brought the meeting to order and began by welcoming everyone. Work Group members introduced themselves to the audience.

### **Review and Approval of Summary Minutes of Jan. 8, 2009 TSPWG**

David Allen asked the members if they had reviewed the TSPWG minutes of January 8, 2009 and if there were any comments or edits to the minutes as presented.

Motion to approve the minutes was made and duly seconded. Hearing no objections to the motion the minutes of the January 8, 2009 meeting were approved. (Attachment A)

### **History and Background on TSP, Part 4, (Seafloor Cables, etc.)**

Scott McMullen provided background information to the TSPWG on how the Cable Committee was developed. Explained how, with the help of then Governor Kitzhaber and Terry Thompson (who was then a House Representative) an agreement with the cable companies was reached. Initially, a cable company could come in, bury their cable

somewhere on the ocean floor and then would establish a “no fishing zone” approximately one mile north or south of where the cable was buried and this would essentially ban fishing in those areas. The companies would enforce their no fish zones vigorously and report violators. Fisherman would have to haul up their nets, move over the cable zone, drop their nets again and continue on. A lot of time and money was being wasted with this practice. In addition, substantial parts of the fishing grounds could have been lost entirely because of where the cables were laid and allowed us to fish near and over the location where the cable was buried. The final agreement also allowed for trawling over the cable, with a waiver on any damages, it also allowed for the cutting of snarled fishing equipment as well as a fund to support lost gear.

Terry Thompson: Politically, it is important that people come together and establish good relationships to solve a common problem and then the process will develop from that. Wave energy is the same, we need to build good communication and develop a mutual understanding and trust between the parties. At the time of the Cable Committee, Scott and I were just trying to preserve good fishing grounds and the cable companies were tying up the these grounds. I feel that it was very important to have a legal binding contract that would work productively for everyone.

David Allen: During the development of the TSP, Part 4, was it similar or different to the process we are going to use for Part 5?

Scott McMullen: I didn’t draft the language. Jeff Kroft from DSL was involved in the crafting of the language and putting into rule what was currently taking place. The difference between now and then is that today we are not quite there yet with the wave energy technology. There is still a lot we don’t know.

Onno Husing: We were side players. When OPAC reviewed it was codified and developing narrative language. There were discussions, specific to spatial corridors on the sea floor, and that was rejected.

Robin Hartmann: How often is Part 4 used and what actions occur?

Jeff Kroft: DSL has codified the rules. Placement of the Part 4 language is embodied with those rules and all state agencies have to agree to follow or DSL will not sign off and permit will not take place. Today, all parties are aware of the language in TSP Part 4 and the permitting process has become very mechanical.

David Allen: There have been a lot of questions and discussions recently concerning the U.S. Navy’s activities in the Pacific Ocean. Unfortunately there was only one public hearing here on the coast. On the telephone is Jessica Hamilton from the Governor’s Office who will update us (Attachment B).

Jessica Hamilton: The Governor has received a lot of emails and messages from the public concerned over the Navy's request and their EIS (Environmental Impact Statement). Oregon Department of Fish and Wildlife (ODFW) will be the lead agency in this matter. ODFW has read the EIS document and we will be working directly to poll their comments. The Governor has also approached the Department of Environmental Quality (DEQ) on this matter and has requested their comments. So far, DEQ has not responded back. The additional one week extension that the Navy recently granted is not enough time for us to thoroughly evaluate the report. We will prepare a letter requesting a longer extension to evaluate their EIS. We will ask the Oregon Congressional delegation to help us as well.

Terry Thompson: Can you explain how this document and process slipped through the state agencies?

Jessica Hamilton: The Navy distributed the Draft EIS to federal agencies in Washington D.C. and not to the local federal agencies in our region. I received a copy that went to the Department of Forestry; no one in the Governor's office received the document. There was a lot of miscommunication.

Terry Thompson: Can you give us a status update on the *New Carissa* settlement funds, are they now available?

Jessica Hamilton: We are currently working with the Legislature to make sure the funds from the *New Carissa* will go where it is supposed to go. Currently there is pressure from the Legislature to put all of that money into the General Fund.

### **Discussion of New TSP Chapter for Wave Energy (Mock Part 5)**

Paul Klarin: For a place to start I have created a mock up of Part 5 (Attachment C) and emailed this to the TSPWG before today's meeting. Please remember this is a draft only and includes comments from Jeff Kroft (DSL) and DLCD staff. They are inserted on the side of the mockup. I will continue to add edits, comments etc., then I will revise the document and redistribute to the group. It is very important to review the text before you come to the meeting.

Paul Klarin: It was decided that a new chapter to the TSP need to be added because the title of Part 4 is "Use of the Sea Floor". Because wave energy is an emerging technology and industry we need to cognizant of new projects being developed in the future. Currently there is a link on the U.S. Department of Energy website that identifies 20 to 30 developing energy projects that encompass different types of ocean use. The group agreed.

The members continued to discuss the jurisdiction of the TSP and its boundaries on the shore side, how alternative energy projects could be developed close in and technically not qualify as being in the territorial sea.

Jeff Kroft explained his comments in the mockup version document and how that language mirrored current DSL OARS (Attachment D). Discussion continued. Comments from all groups will be reviewed, that is the intention of the TSPWG. The goal is to site these facilities.

Terry Thompson: Is this a goal or a statement of how we are going to do things. State agencies don't understand about fishing, they know their strategies for fishing. The fishing industry was not at the table.

Jim Good: Habitat and species and marine ecosystems would be simplified. I am concerned about the work "avoid". We should use the word "minimizing" and avoid could be construed.

Terry Thompson: What I am worried about is what the state agencies are saying that the energy projects will go here or there and trying to make sure it is not near historic fishing grounds. Fishing is a fluid industry and this policy needs to respect the strategy of the fishing industries.

Discussion of language changes to Chapter 5 title continued. The TSPWG agreed to delete "wave energy" and change the title of Part 5 to "Renewable Ocean Energy Development Facilities within the Territorial Sea".

Paul Klarin: We are on a very short timeline and it is important for work group members to review all of the material sent ahead of time and come to these meetings prepared to make substantial comments, changes, or input to the language. The LCDC subcommittee, TSPAC, will be then take our comments and conclusions and make policy recommendations back to the full Commission. Discussion among work group members continued.

### **Public Comments:**

Rick Williams: Question on how the alternative energy facilities will connect to onshore stations or facilities. Discussion of Reedsport settlement process will be later in the meeting.

John Lavrakes: I have been observing the meeting and thinking of suggestions on how to better implement the process you are discussing. I am currently working with a group of about 31 agencies and using facilitators, we are collecting comments on line. I would be happy to discuss this further with you to see if the process could be used here.

**Review and Discussion of Reedsport Settlement Process:  
Review and Discussion of Possible Changes to TSP, Part 2 for Wave Energy:**

Cathy Tortorici (on the telephone): With the help of Greg McMurray I hope to explain the Reedsport settlement process beginning with the background to the members. A lot of the important parts of the settlement agreement are still be negotiated and are confidential. We anticipate the report will be available to the public February 18, 2009. We will know more then. Greg McMurray came forward and presented and discussed changes to the TSP with TSPWG members (Attachment E)

David Allen: In Part Two of the settlement, what efforts surfaced and what types of concepts/process was in the settlement that was not included in the TSP?

Fred Sickler: Can you give us some examples of adaptive management?

Greg McMurray: Whales would be a good one. We are watching the vicinity as the whales are going through the facility array. That is kind of risk, so perhaps we should use acoustic devices in the water and watch to see if it effects the whales. The adaptive management could potentially end with the facility being shut it down or forced elsewhere. The project manager for adaptive management also interacts with sub managers on the other issues. There is material in the settlement agreement listing who is responsible and who will get the information. It is important that all groups need to make sure to distribute this material when it is given out. Discussion about public notice and making sure that the public is well notified among the members continued.

Terry Thompson: I am frustrated. There is a formal process of how the fisheries are included. The crab industry was not included in yesterdays meeting. Collaborative management has to be more that just a word. Discussion continued among members.

David Allen: We need to keep moving forward into the text for wave energy and finding ways to make sure this doesn't happen here. TSP provides for collaborative research in cooperation with the fishing industry.

Robin Hartmann: Part of the FERC settlement process is that industries must either opt in or opt out of the settlement. The fishing industry opted out so they could continue to provide input during the process. This needs to be a state process, instead of the federal process which is very complex, etc.

David Allen: We need a more formalized approach that will combine their efforts and will lead to better understanding. This needs to happen either through the settlement agreement or with the TSP. There would be more talk about having a collaborative approach between ODFW and the fishing industry at the state level.

Paul Klarin: We need suggestions about how fishing industries can communicate collaboratively. The state agencies have their roles described out in statutes, etc. and it is far less clear about who in the fishing industry is included. Could there be advisory groups at the local levels?

Onno Husing: This has been the most helpful way to understand this issue. The FERC settlement process is going back to the mechanics. If you have this work in the TSP, then you can pull out the TSP and use Goal 19 as a checklist or framework with similar issues.

Greg Mc Murray: It is an existing user. If you are having a new use then you have to talk to the existing users. Discussion continued among members.

Paul Klarin: One of the missing parts of this is bringing all of those advisory groups together and having an umbrella group that would go forth and address all of these issues. On state agencies, who is the point person and who is the lead agency? It is harder to identify a contact with the smaller community groups.

Cristin Don: Looking back on the Reedsport project in part we had to fill in gaps that were missing in the FERC process to make sure the State is covered. FERC is concerned about species while the State is interested in the shoreline. Short term and long term uses. The company had a work plan that was very helpful, however; the company over simplified the Environmental Impact Statement (EIS). The EIS was so general and it could be interpreted in many different ways. It was not laid out in any type of detail. TSPWG members continued their discussion about the inventory content and what if OPT had used this checklist instead of the hydrological one -- which was targeted to rivers not ocean uses.

Cathy Tortorici: Overall the OPT spokesperson did a good job. Study plans were proposed and supported and he went out and talked personally to the local communities reassuring them that OPT is in this for the long haul. It is important to have all of the details up front so we can all be onboard when the project is small.

Cristen Don: Another issue was that the company didn't want to provide a salvage plan. It became apparent that long-term monitoring of the facility is going to be a big issue. We need to set up a control area monitoring the environment both inside and outside of the project area. These were all missing in the FERC licensing application.

## **Update on Activities Relating to Spatial Mapping of Fishing Effort**

Onno Husing: We have received approximately \$68,000 from DLCD, Ocean – Coastal Division, this is NOAA grant money that is now signed and we are ready to start the fishing mapping agreement. Sources voted in favor of contracting and consensus of the agreement and contract. Ecotrust will begin assisting us in the interview process then the work will begin. How candid will the talks between the fishing industry and Ecotrust be, that is an important element? I think Ecotrust has responded well to the fishing industry questions and concerns. There has been brainstorming, about the mapping and how some areas could be drilled down into several different layers. It was up to the fishing group to decide how they wanted to disseminate the information and at what level they would receive the information.

Once the maps are in place there will be a need for policy language. We also need to put language in Part 5 about the maps. We won't have the entire coast mapped and we will need to have language that will focus on future issues.

Paul Klarin. Hopefully by the end of December 2009 we will have a section of the coast mapped out and demonstrated without having all of the port areas surveyed. We will not have mapping completed in all areas.

Fred Sickler: Who oversees Ecotrust and please explain how does this work get done? Are they out there gathering information and is someone overseeing who and how they are sampling?

Onno Husing: This is the first cut for the SOORC committee. It is a highly collaborative process to what they do, the information needs to be adequate in the spatial mapping and then it will then be brought back to the fishing groups to review. Facts will be checked and double checked. Discussion among the group members continued. Meeting ended at 4:05 PM.

Respectfully submitted,

Lorinda De Haan

### **Attachments:**

- A –January 8, 2009 TSPWG Minutes, 9 pages.
- B – Letter to Vice Admiral Lautenbacher from Gov. Kulongoski, dated 09-11-06, 2 pages
- C – Draft of new TSP Chapter for Wave Energy (Mock Part 5), dated 2009, 4 pages
- D –Dept. of State Lands OAR, Chapter 140, dated 2/11/09, 15 pages
- E –PowerPoint presentation on TSP, Section Two, etc. by Greg McMurray, 8 pages.