

Bluewater Wind * Cape Wind Associates, LLC * Coastal Conservation League *
Deepwater Wind, LLC * Environmental Defense Fund * Global Energy Horizons
Corp. * Independent Natural Resources, Inc. * National Hydropower Association *
Natural Resources Defense Council * Ocean Conservancy * Pacific Energy
Ventures LLC * Pacific Gas & Electric * Save the Bay

February 12, 2010

Nancy Sutley, Chair
Interagency Ocean Policy Task Force
c/o Council on Environmental Quality
730 Jackson Place
Washington, D.C. 20503

Re: Interim Framework for Effective Coastal and Marine Spatial Planning

Dear Chairwoman Sutley:

We are a unique collaborative of ocean renewable energy developers, utilities, and conservation nonprofits who have previously articulated shared principles on ocean renewable energy and marine spatial planning. A major impetus for our collaboration is a recognition of the severe threat that climate change and ocean acidification present to our oceans, and the need to move forward responsibly with the development of renewable energy to address these threats. One of our shared goals is that any Coastal and Marine Spatial Planning (CMSP) system protect marine ecosystems while ensuring the orderly and sustainable development of ocean resources in a manner that respects and minimizes conflicts with existing uses. We believe this goal is reflected in the President's order of June 12, 2009 creating the Interagency Ocean Policy Task Force (Task Force). The interim framework document on CMSP released by the Task Force on December 12, 2009 ("*Interim Framework*") is the first step toward the creation of the type of process envisioned by the President and, on behalf of our organizations, we would like to offer the following comments on that document.

We are pleased to see that the *Interim Framework* incorporates many of the ideas discussed in our groups' set of joint principles for ocean renewable energy and the marine spatial planning process (please see Appendix). In particular, we applaud your inclusion of several of our recommended key principles: Principle 1 (goals of CMSP), Principle 2 (ecosystem-based planning based on spatially and temporally explicit data), Principle 4 (transparent process), Principle 5 (move forward expeditiously with regular revisions) and Principle 9 (coordinate federal and state efforts).

To further strengthen the *Interim Framework*, we hope the Task Force will consider the critical clarifications and improvements described below, including: creation of an appropriate transition protocol for phasing in CMS Plans; assigning a high priority and commensurate funding to environmental baseline data collection; assessment of environmental impacts and benefits in evaluating uses and considering tradeoffs in CMS Plans; incorporation of adaptive management and local and regional priorities into the renewable energy siting process; and prioritization and maximization of regulatory efficiency for activities consistent with the *Interim Framework*. We address each in turn.

I. Develop a More Detailed Transition Protocol.

Ocean renewable energy holds great promise for reducing U.S. reliance on fossil fuels and creating new jobs. Wind, wave and tidal energy off the coasts of the United States have vast potential as sources of clean, renewable electrical power.¹ However, ocean renewable energy is currently at a crossroad. With sufficient investment, it is clear that offshore renewable energy can produce abundant clean power from facilities near coastal load centers. With proper care in siting, this clean renewable energy can be produced without significant negative environmental impacts. But the needed investment will not be forthcoming without a stable and predictable leasing and permitting regime. Federal regulators are currently preparing to initiate an offshore renewable energy leasing process that Congress directed them to put in place by May 2006. To commit the capital that will be required to pursue the long-anticipated leasing process, investors will need reliable protections against the risk that the CMSP process will lead to further delay and mid-course changes in siting procedures and criteria.

A key issue raised in our Principle 8 is the imperative that CMSP not be used to delay or impose a moratorium on ocean renewable energy projects. This concern has been borne out in recent months as the opponents of certain projects have sought additional delay pending completion of the planning process. Accordingly, we commend the Task Force for stating that “CMSP is not meant to delay or halt existing or pending projects related to ocean, coastal, and Great Lakes environment or their uses.”² We also support the idea that “[o]nce a CMS Plan is put into effect ... its implementation would be phased in to avoid undue disruption or delay of projects with pending permits or other applications.”³ However, we respectfully urge the Task Force to go beyond this assertion and clarify how this concept will be implemented.

We recommend that the Task Force formulate a “transition protocol” to avoid compounding regulatory uncertainties currently faced by ocean renewables firms and their investors. Such a protocol would more clearly articulate how “those responsible for making decisions on [existing or pending] plans or projects [are] expected to take into

¹ Wave and tidal technologies are still at the prototype stage, although they clearly hold great promise. The Electric Power Research Institute (EPRI) estimates that the U.S. wave and current energy resource potential that could be credibly harnessed is about 400 TWh/yr, or about 10% of national energy demand. (Bedard, R., et al., *North American Ocean Energy Status*, EPRI March 2007). Offshore wind turbines, in contrast, have been producing electricity in Europe for nearly 20 years. This experience provides a basis for useful projections of build-out scenarios for U.S. offshore wind farms. A 2006 review of U.S. offshore wind resources by the U.S. Department of Energy (DOE) estimated that winds over relatively shallow U.S. coastal waters (less than 60 meters in depth) could generate more than 270 gigawatts of electrical power, equivalent to more than 25% of existing installed capacity. (Michael Robinson & Walt Musial, National Renewable Energy Laboratory, U.S. Department of Energy, *Offshore Wind Technology Overview*, Oct. 2006, available at <http://www.nrel.gov/docs/gen/fy07/40462.pdf>.) A 2008 DOE Report found that focused development of U.S. offshore wind resources could lead to 54 gigawatts of installed offshore capacity by 2030. (U.S. Department of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply*, July 2008, available at <http://www.20percentwind.org>.)

² *Interim Framework* at 20.

³ *Id.* at 20.

account the national CMSP goals and principles, national policies, and any identified national and regional CMSP objectives in future decision-making to the extent possible under existing law.”⁴ Without further clarification of this statement, ocean renewable energy developers are concerned that their investors may perceive CMSP as creating additional risks of delay for their projects.

CMSP is intended to transform the way that agencies work together in meeting their varied responsibilities with respect to coastal and marine resources. The contemplated transformation in federal agency decision making would unfold over an extended period of time. For instance, CMS Plans would be completed and certified (at least in their initial versions) three to five years after formation of the Governance Advisory Committee.

We understand that the Task Force may be unable to resolve all uncertainties concerning how the transition to a CMSP regime will affect the entire range of existing projects and activities in coastal and marine areas. Nevertheless, we urge the Task Force to set out a clear protocol to guide the transition to CMSP. This protocol, in our view, should extend heightened protection against delay to projects and activities that advance the National Goals and Guiding Principles of CMSP,⁵ and address the climate change concerns discussed in Section III of this document. Activities such as ocean renewable energy development that “[s]upport sustainable, safe, secure, efficient, and productive uses of the ocean” or that help to “[p]rotect, maintain, and restore” ocean or coastal resources should receive such heightened protection.⁶ Activities that tend to undermine these stewardship objectives, on the other hand, can reasonably be subjected to new procedures and criteria, even if this comes at the cost of increased uncertainty for pending projects.

The Framework should direct that in determining whether a particular renewable energy project is subject to the provisions of a certified regional CMS Plan, agency decision makers should consider how far, at the time of Plan certification, that project had progressed under the pre-Plan review and approval process. If, at the time of Plan certification, substantial investment, development, and review has occurred on a renewable energy project (under standards to be determined), the developer of the renewable energy project would be protected in its reliance on pre-Plan procedures and criteria.

Massachusetts law governing the implementation of that State’s ocean planning regime illustrates some aspects of the approach we are advocating. Section 22 of the Massachusetts Oceans Act is designed to exempt from the provisions of the Massachusetts ocean management plan serious projects that have received a specified level of regulatory (including environmental) review, while requiring plan compliance for projects that have received less review. The transition protocol that we advocate would employ the same general approach as the Massachusetts provision, but would be adapted

⁴ *Id.* at 20.

⁵ *Id.* at 7.

⁶ *Id.* at 7, sections VI.1 & VI.2.

to the CMSP context. Apart from the distinction between activities, such as renewable energy generation, that advance stewardship objectives and activities that do not, as noted above, we believe that the critical date to determine whether renewable energy projects qualify for protection under the CMSP transition protocol should be the date of Plan certification.

II. Fund Collection of Environmental Baseline Data.

Our Principle 3 emphasizes the importance of securing significant funding “to gather, map, standardize, assimilate and make available baseline environmental and economic resource data through a central clearinghouse.” We therefore commend the Task Force for proposing a central data clearinghouse (the “national information management system”).⁷ Such a system is not only critical to achieving one of the central purposes of CMSP, to “improve ecosystem health and services by planning human uses in concert with the conservation of important ecological areas,”⁸ it also has the potential to provide important benefits to ocean users, including those involved in offshore renewable energy siting.

We believe it is important, however, for the Task Force to provide a clearer statement of the central importance of comprehensive, adequately funded scientific baseline research for renewable technologies, and the intent of the federal government to assist with the development of this information. The development of such a baseline may be implicit in the *Interim Framework*'s focus on identifying and filling data gaps⁹, but there are a number of reasons to be more explicit in the need to do this work.

As we stated before, developing such a baseline has become a major cost – and therefore a hurdle to development – for ocean renewable energy project developers. Gaps in baseline data have been encountered in almost all areas where ocean renewable projects are being considered. Improved scientific baseline information is also important to enable government officials and stakeholders make informed planning decisions. In many cases the research necessary to develop a scientific baseline -- which can aid the safe, environmentally sound development of ocean renewable energy -- can be better performed by government agencies. By more explicitly calling for the development of this data, the Task Force will ensure that it is given the priority it deserves.

In addition, we note that, once an environmental baseline is developed, there will continue to be a need for ongoing monitoring and data gathering. Public funding of all information described in this section should also insure that it will be available in the public domain, which will help to inspire greater public confidence in the CMS Plans and renewable energy siting decisions.

⁷ *Interim Framework* at 24-25.

⁸ *Id.* at 3.

⁹ *Id.* at 23-25.

Accordingly, we also seek clarification on the financial priorities enumerated in the *Interim Framework*.¹⁰ We commend the Administration for prioritizing the national data information system and related science needs for the ocean renewable energy industry these priorities are critical to moving forward.

III. Incorporate Evaluation of Positive and Negative Effects on Climate Change Into CMSP Objectives, Standards and Planning Methods.

The *Interim Framework* states that in order to achieve the national CMSP goals, efforts are to be guided by twelve principles, including:

CMSP Plans and the standards and methods used to evaluate alternatives, tradeoffs, cumulative effects, and sustainable uses in the planning process would be based on clearly stated objectives.¹¹

Climate change and ocean acidification are two of the greatest threats to our oceans and coastal resources. We therefore strongly recommend that the CMSP *Framework* explicitly include valuation of carbon footprints. CMS Plans should account for the potential for regulated activities to increase or reduce greenhouse gas emissions, as an important factor in considering appropriateness of uses under the CMS Plans.

Within the CMSP standards and methods, we also ask the Task Force to recognize the importance of protecting public access to our ocean, coasts, and Great Lakes. Non-consumptive uses such as surfing, diving, and beach-going provide significant economic and sociocultural benefits to coastal communities and the nation as a whole. Participants in this collaborative working group also emphasize the general compatibility between non-consumptive uses and the development of ocean renewable energy as well as the value of CMSP to identify and address any potential conflicts between these two uses.

IV. Pair the Precautionary Approach with Programmatic Adaptative Management and Ensure Flexibility in CMSP to Address Local Priorities

The *Interim Framework* states that CMSP would be guided by the precautionary approach.¹² Facilitating the development of renewable energy technologies as a means of combating climate change is one particularly relevant example of the implementation of the precautionary approach. In the context of CMSP, we understand the precautionary approach to require focused efforts to permit timely development of ocean renewable energy projects, even in the absence of scientific certainty, subject to cost-effective measures to avert any threats of significant local or regional impacts that may be identified. We anticipate that CMSP will help to minimize ecological damage by identifying those areas best suited to ocean renewable energy projects.

¹⁰ *Id* at 31-32.

¹¹ *Id* at 8.

¹² *Id* at 8.

Consistent with our Principles 6 & 7, we encourage the Task Force to pair application of the precautionary approach with a process of applying the lessons from the siting of early ocean renewables projects to later installations. This iterative incorporation of new information into the CMS Plans – adaptive management at the programmatic level – will allow flexibility in siting renewable energy projects as more is learned about existing technologies, new technologies are developed, and measures are developed to minimize any unacceptable impacts or interactions. The *Interim Framework* states that CMSP would be “adaptive and flexible to accommodate changing environmental conditions ...”¹³ We encourage the Task Force to extend the adaptability and flexibility principle not only to changed environmental conditions, but also to new renewable energy technologies and new data about ocean uses.

Additionally, we support the use of a regional approach to CSMP that provides flexibility for addressing local priorities, and includes the meaningful participation of ocean users and the general public. States that have begun developing spatial plans for their state coastal and ocean waters, including Massachusetts, Rhode Island, and Oregon, have benefited from incorporating input from coastal communities and recognizing local values and stewardship. Fostering public and stakeholder participation can help minimize potential impacts to existing uses, as well as help promote the support of various ocean stakeholders who use and value our nation’s tremendous coastal ecosystems, and we encourage the Task Force to consider new and more meaningful forms of public process.

V. Ensure Regulatory Efficiency.

The Task Force correctly notes that “[m]any have raised concerns regarding whether CMSP would result in additional layers of regulatory review or delays in decision-making.”¹⁴ While the report says that “[t]o the contrary, CMSP is intended to build upon and significantly improve existing ... decision-making and planning processes,” we encourage the Task Force to include additional information about how regulatory efficiency will be achieved.

Because ocean renewable energy is new to the United States and many of the technologies are still under development, the siting process has been unnecessarily time-consuming, costly and uncertain. Resolution of jurisdictional issues like the FERC-MMS conflict has helped alleviate some uncertainty. But the offshore regulatory regime is still exceedingly complicated and new regulatory initiatives can give rise to concerns about redundant processes and significant inefficiencies. The CMSP process offers an opportunity to reduce the regulatory inefficiencies and identify areas best suited for ocean renewable energy. We encourage the Task Force to add additional details about what final CMSP Plans will look like and how they will achieve regulatory efficiencies.

¹³ *Interim Framework*, Principles 7 & 8 at 8.

¹⁴ *Interim Framework* at 3.

For instance, once Programmatic Environmental Impact Statements (PEISs) exist for particular CMSPs, we expect that the MMS and other NEPA reviews can be tiered off the PEIS for each CMS Plan, resulting in improved regulatory efficiency and increased assurance that ocean renewable energy projects are being sited to minimize any environmental impacts of the projects or conflicts with other uses. However, CMSP should not unduly burden federal agencies, delay projects, or require stakeholders to expend resources working through redundant processes.

We appreciate your consideration of our comments and look forward to working with the members of the Task Force as the implementation of the *Interim Framework* moves forward.

Sincerely yours,

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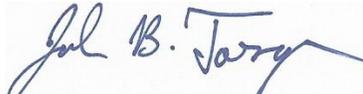
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Ocean Renewable Energy and the Marine Spatial Planning Process

A Collaboration Between Ocean Renewable Energy
Interests and Ocean Conservationists

October 2009

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Deepwater Wind, LLC

Global Energy Horizons Corp.

Independent Natural Resources, Inc.

Ocean Power Technologies

Pacific Energy Ventures LLC

Pacific Gas & Electric

Pelamis Wave Power Ltd.

Portland General Electric

ASSOCIATIONS

National Hydropower Association

Oregon Wave Energy Trust

CONSERVATION ORGANIZATIONS

Coastal Conservation League

Environmental Defense Fund

Hydropower Reform Coalition

Natural Resources Defense Council

Ocean Champions

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*Endorsement of this document should not be interpreted as an endorsement of any specific legislative proposal or any specific development project.

On June 12, 2009, President Obama signed a Presidential Memorandum creating an Interagency Ocean Policy Task Force (Task Force) led by the Council on Environmental Quality. The Task Force was assigned, first, with making recommendations towards establishment of a national oceans policy and an interagency framework to implement that policy; and, second, with making recommendations to form “a framework for effective coastal and marine spatial planning.”

The Task Force, building on the work of the Pew Oceans Commission and the U.S. Commission on Ocean Policy, publicly released its interim recommendations on a national oceans policy that “ensures the protection, maintenance, and restoration of ocean, coastal, and Great Lakes ecosystems” on September 17, 2009. The memorandum now requires the Task Force to turn its attention to marine spatial planning, and to issue recommendations on an effective interagency process that is “a comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict and sustainable use of ocean, coastal, and Great Lakes resources.”

As described in a recent report prepared for UNESCO, marine spatial planning is a public process of analyzing and developing management measures to coordinate the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic and social objectives that have been specified through a political process. *See* <http://www.unesco-ioc-marinesp.be/>. This task is complex because of the enormous number of federal and state agencies and stakeholder groups that must be accommodated in such a process. However, there have been successful efforts at marine spatial planning in Europe and in individual states that can provide models for the President’s initiative.

The rapid deployment of clean, renewable energy is an Administration priority and a national imperative. A potentially important aspect of marine spatial planning is to identify appropriate areas for the development of new ocean uses like renewable energy. The oceans hold great potential and promise for production of electrical power from waves, tides, ocean currents, and offshore winds. However, siting of such facilities will need to take into account numerous other uses of the ocean, such as fishing, boating, surfing, aesthetic appreciation, wildlife habitat, shipping, oil and gas production, and other recreational, ecosystem, and commercial services. Marine spatial planning provides a potential avenue to coordinate all of these new and existing uses.

It is important to point out that, as used in this document, marine spatial planning is not the same as “ocean zoning.” While zoning can be used to implement spatial plans for marine areas to achieve multiple-objective and multiple-use management of marine spaces, it is also possible to engage in marine spatial planning that simply identifies ecologically and socially significant areas or indicates preferences or priorities.

Recognizing that marine spatial planning may have potential benefits, but may also present potential obstacles for their industry, ocean renewable energy interests have been working with environmentalists to produce a set of principles that all agree should form

the basis for conducting marine spatial planning.¹⁵ Those principles are:

1. Two key goals of marine spatial planning are to protect marine ecosystems and ensure the orderly and sustainable development of ocean resources, in a manner that respects and minimizes conflicts with existing uses.

For use of our ocean resources to be truly sustainable, we must protect marine ecosystems. The transition to a green energy future will be of great benefit to the world's oceans because reduction of greenhouse gas emissions is critical to forestall the impacts of climate change and ocean acidification. Ocean renewable energy can be an important part of that future. Identification and protection of important marine ecological areas and responsible planning will ensure that ocean renewable energy development is consistent with ensuring the overall health of marine ecosystems, so that they can continue to provide the services humans want and need, like food, jobs, and recreation. Identifying compatibilities with ecosystem services and existing uses should be an explicit goal of, and is a key benefit to, marine spatial planning.

2. Planning should be ecosystem-based, spatially and temporally explicit to the greatest degree possible, and founded on the best information available.

Given that a major goal of marine spatial planning is protecting marine ecosystems, plans must be more than simply roadmaps of existing or potential uses. To be most useful, marine spatial plans must consider not only where an activity or a species occurs, but when it occurs. Plans should strive to gather and include this type of four-dimensional data. However, planning also should not be delayed until we have “perfect” data, and we must move forward with the best information available at the time planning is initiated.

3. The Administration must make a commitment to secure significant funding to gather, map, standardize, assimilate and make available baseline environmental and economic resource data through a central clearinghouse.

Funding of environmental baseline data gathering, mapping, assimilation and dissemination is essential to begin the implementation of marine spatial planning and to foster development of ocean renewable energy technologies. Such data includes species composition, location and temporal behavior; key habitats; bathymetry; subsurface geology; and wave, tidal, and wind resources. Gathering such information has become a major project cost for developers and could in some cases be better performed by public agencies, which would have the added benefit of making such data available in the public domain. Some of these data already exist, but there is no central clearinghouse for compiling and distributing them. Without a significant funding commitment on the part of the Administration and Congress it is likely that the ocean renewable energy industry in the United States will continue to lag behind other countries.

4. The planning process should provide transparency and an opportunity for

¹⁵ The first five principles are broad principles of general applicability, while the second five are more specific to ocean renewable energy.

meaningful input for stakeholders, with a specific aim of reducing conflict in siting decisions.

Public involvement should be structured to ensure consideration of relevant input and require acknowledgement of how such input was incorporated or not into planning documents. Local involvement should be encouraged by providing explicit opportunities for input from stakeholders at the coast, including fishing and recreational interests. Transparency is critical to legitimacy and can lead to greater public confidence in siting decisions.

5. Marine spatial planning needs to move forward efficiently, and plans should be reviewed and revised at regular intervals after they are adopted.

A prolonged marine spatial planning process is inefficient for all parties involved. Plans should be completed as quickly as possible and reviewed and revised regularly, subject to new information.

6. Planning should explicitly facilitate the appropriate siting of prototype and commercial-scale renewable-energy-based electric generation facilities, and allow for their construction, testing, operation and evolution as technologies are perfected.

Plans need to be living documents that are flexible enough to accommodate new technologies and newly-understood environmental variables and information, and allow for consideration of newly-proposed projects. As some ocean technologies are still evolving, developers are concerned that marine spatial planning efforts may inadvertently foreclose consideration of potentially viable sites at a time when the industry is just beginning to grow. In the event that some type of renewable energy preference zones were designated in the future, such zones should not be defined as the exclusive locations where developers can apply to site renewable energy projects, provided that important marine ecological areas are appropriately protected and existing ocean uses are taken into account.

7. Adaptive management principles should be central to any ocean planning regime to enable mitigation of unanticipated effects of new uses.

The development of ocean renewable energy will be an iterative learning process that will rely on feedback from pilot projects and the first commercial-scale installations.¹⁶ Marine spatial planning processes should be explicitly designed to incorporate the lessons learned from these installations, as well as new scientific and commercial information and advancements in renewable ocean energy technology, in regular updates to ocean plans.

¹⁶ In the case of offshore wind, the first commercial projects, constructed in Europe, date back 18 years, and have generated environmental data that is relevant to marine spatial planning in this country.

8. Federal and State agencies should continue to review and approve permits for applications to develop ocean renewable energy projects using the best information available, consistent with existing laws, regulations and state-federal agreements, while the marine spatial planning process is being conducted.

Because of the national and global importance of developing new sources of renewable energy, we believe that there should not be a moratorium or delay on new ocean renewable projects during the marine spatial planning process.

9. Because the boundary between state and federal waters is critical to the development of ocean renewable energy, planning should be coordinated with ongoing state coastal zone management plans and marine renewable initiatives.

Many of the best initial sites for ocean renewable projects straddle the boundary between state and federal waters. In addition, states have the authority to affect projects in federal waters through consistency determinations under the Coastal Zone Management Act and federal agencies have authority to affect projects in state waters through various permitting requirements. Several states have also initiated requests for proposals for ocean renewable projects off their coasts. Accordingly, states will be key partners in any marine spatial planning process and federal efforts must provide avenues and incentives for state participation.

10. Marine spatial planning should explicitly weigh the benefits of developing clean renewable offshore energy against its potential environmental externalities.

We need immediate and strong action to transition to new renewable sources of energy that can support a vibrant and sustainable economy. We must move ahead expeditiously with development of clean, renewable energy offshore in a manner that protects and maintains ocean ecosystem health. Many of the potential ecological externalities of offshore renewables production may be addressed through proper siting and mitigation measures; marine spatial planning can help with this effort.