

MEETING SUMMARY

**September 25, 2009
Ocean Energy Task Force
Appropriations Committee Room
Room 228, State House
Augusta, Maine**

I. Introductory Matters

Chair Beth Nagusky opened the meeting and welcomed all in attendance. The meeting opened with a round of introductions from the Task Force and the public.

The Task Force is in its final phases and the next two months will be very exciting in terms of what the possible outcomes are.

II. Update On Test Area Site Selection

Bob Marvinney of The Maine Department of Conservation (DOC) began an overview of the outreach process, beginning with a description of the scoping meetings involving municipal officials, NGO representation, and fishermen. The scoping meetings resulted in a feeling from the participants that this test site initiative is probably a good thing for the State of Maine and that the way the state is going about the outreach process, is a very positive plan.

The outreach effort has begun convening public meetings throughout the state. There have been four so far, with the final meeting coming next week on the 29th in Rockport. At these meetings, there have been a range of concerns expressed, though the overall tone is positive regarding the siting process.

Kathleen Leyden of the State Planning Office (SPO) added that when we've gone out to the public meetings, there has been a panel with representation from the University, state agencies, and an energy expert. All of the test site information is available online at the Department of Conservation's website -- <http://www.maine.gov/doc/initiatives/oceanenergy/oceanenergy.shtml>

III. Discussion of Submerged Lands Leasing and Regulatory Issues

Jeff Pidot addressed the task force regarding his white paper on submerged lands leasing. Mr. Pidot was asked by SPO to look at a variety of issues surrounding leasing processes in Maine's coastal waters. With appropriate legislation, the traditional public trust purposes can embrace wind power projects.

There are two "neat baskets" that issues regarding this topic fall into. They are environmental regulation in coastal waters, and the state's ownership in trust of Maine's coastal waters. There

is a lot of interplay between the two, but the division is still present. Some thoughts may be that it might be easier to have one overarching agency overlooking both of these topics. Rhode Island, for example follows this approach. In Maine, DEP, and DOC oversee the use of the coastal area. Mr. Pidot's conclusion is that these two agencies should continue what they are doing, regulating on the one hand (DEP), and leasing on the other hand (DOC). That said, there is room for making these two programs as harmonious as possible.

❖ **Environmental/Regulatory Concerns**

The state's principal regulatory law may deal with wind development, but does not necessarily deal with wind power in coastal waters. This law is the site law. It applies generally to projects that disturb a great deal of ground or sponsor a large amount of development. This does not necessarily mean a wind farm would trigger site law, which would mean the state would not have a tremendous amount of control over wind power projects in state coastal waters.

In 2008, the legislature enacted a large amount of reforms that changed a tremendous amount of environmental laws to facilitate development of wind power development in upland areas in Maine. A question that continued to come up during Mr. Pidot's research was, "why does the state have laws to facilitate development in upland areas, but no laws regarding coastal waters?" Mr. Pidot believes that many of these recommendations can be harmonized for coastal waters.

A similar type of visual and scenic review to the state's aquaculture law may be applicable to wind farm development.

Mr. Pidot believes that there was a lot of uncertainty around whether or not LURC had jurisdiction over areas within state coastal waters. There are clarifications to LURC's role that *can* be accomplished, though the suggestion from Mr. Pidot is that the role *needs* to be clarified. Mr. Pidot's recommendation is to divest LURC of regulatory capabilities in the coastal zone, though the agency would maintain a consultative role.

Regarding planning, around the nation, there have been massive cases of states investing money in mapping and planning.

Municipal involvement is an issue that spawns uncertainty that could become a significant hindrance to the state's interest in leasing its own trust lands for development purposes. Towns were created, by charter, over the years, and in many case, the charters are very ambiguous and possess conflicting language regarding town jurisdiction. This "scattershot" scheme made no difference historically as there was no reason for a town to become involved in regulating offshore development. We cannot know to any extent of certainty what the town's role in leasing state waters to wind developers may be. Mr. Pidot's recommendation is to divest towns of any regulatory role, but remain a consultative entity in the process.

❖ **Leasing Concerns**

Any rental program developed for the state should be coherent and predictable. It should also be commercially reasonable from both perspectives (the land lord or the state, and the lessee or the developer). A rental program should also not skew the marketplace. Some of Mr. Pidot's recommendations during research were to keep rental fees for this type of development at zero to

encourage growth. However, if there is federal rent in federal waters, and rent for land-based developments, this would skew rent in favor of coastal development. Mr. Pidot's suggestion is to follow the example of Texas. This would involve a fixed rent (modest) payable per acre annually, or a royalty rent which is paid during a commercial action of the development. Mr. Pidot also thinks that rent could be charged in the form of kilowatts in place of cash. Some amount of the generated kilowatts could be provided to the state for its own energy utilization or provided to the grid at discounted prices.

IV. Discussion of Recommendations of Human/Ecological Impacts and Regulatory Subcommittees

Subcommittee Two: Regulatory and Permitting Recommendations

Kathleen Leyden of SPO introduced Todd Burrowe's overview of Subcommittee 2's recommendations going forward. Mr. Burrowes reviewed the decision-making framework that Subcommittee 2 put forward. The DRAFT recommendations can be viewed here: http://www.maine.gov/spo/specialprojects/OETF/Documents/Subcommittees/Subc2_Regulatory/subc2_draft_recommendations_TFrpt.pdf

Overall Themes:

- Streamline and Harmonize state agency decisions.
- There is potential to bring economic, environmental and energy benefits to the state.
- There should be legislative findings that wind power is in the scope of the state's public trust doctrine.
- The group also recommended that the state continue the bifurcated (DOC and DEP) regulatory and leasing process.
- The state's site law should be amended to capture offshore wind projects of 3 MW or more.

Subcommittee One: Human and Ecological Updates

Sean Mahoney of the Conservation Law Foundation and Subcommittee Two reviewed Marine Mammals and Birds/Bats actions that have been taken up to this point. The Subcommittee in its entirety has not met since the Spring of 2009, however, smaller groups of experts have met to discuss any issues regarding these two environmental concerns.

The groups have met to really discuss the structure and framework for the long-term development of wind farms, not a specific opportunity to comment on the seven selected demonstration sites.

- **Birds and Bats**

There is not nearly the amount of information available for seabirds as there is for shore birds. Challenges include migratory and forage patterns. Mr. Mahoney commented on the Stantec Pilot Project. Preliminary results of this bird monitoring project will be presented in December with final results in the spring.

- **Marine Mammals**

A similar conversation occurred with marine mammal experts regarding challenges and issues that may present themselves. How will the regulatory process be adaptable to additional information that is identified, or issues that may arise as a result of this additional data?

Recommendations

- The State needs to be creative in how we can gather data. There must be creative ideas that can be looked at to address both the length of studies that we might need and the cost of studies that might be needed. Is there a way to create a cap on cost of studies tied to capitol cost of the development, etc so the developer has some certainty?
- There is a real interest and desire to have some sort of continuing process where the experience and knowledge of these groups can continue past the expiration of the Task Force.
- There is energy for taking the amount of work that this Task Force has done and applying it to other uses in the water in addition to ocean energy. The Coastal Atlas initiative was mentioned.
- “Avoid, minimize, and mitigate” must be built into any further initiatives.

V. Public Comment

- John Ferland (ORPC) – Regarding the submerged lands discussion, there is a lot of hard work that is currently transpiring, and that the Task Force should take a broad view of how this should be done. Possible examples of how Maine might choose to charge the developers include taxes, lease fees, etc, but the State also needs to consider the massive amount of environmental monitoring costs that are coupled to capital costs. To sum up, there must be a comprehensive view of costs, not in segments, to help to foster growth. Recommends that the tidal and regulatory committees meet jointly so that the tidal community can have a voice as well.
- Jim Monroe – Would encourage the Task Force to include tidal and wave energy wherever wind is mentioned. It would also be unwise to give local bodies too much jurisdiction over windpower developments.
- Jeff Thaler (Burnstein and Shur) – Concerned about over-permitting issue mentioned previously and would encourage the Task Force to look at coordination and fewer filed permits to foster growth.
- Rebecca Holburton (UMaine) – Recognizes the need to have an ongoing body(s) in terms of environmental issues.

- Elizabeth Butler (Pierce Atwood) – Questions the bifurcated process that is in place currently and whether or not it’s going to be enough.
- Jim Wadsworth (Seafood Business) – Did the marine mammal folks discuss technology known as multi-beam sonar. Whales had an issue with this type of sonar. This should be kept in the back of everyone’s mind.

VI. Tidal Subcommittee

Parker Hadlock gave an overview of recent developments within the Subcommittee.

Five Primary Topics Covered

- Removal of environmental regulatory deterrents;
- Continuing effort to advance the state of the technology;
- Transmission strategies to support remote renewable energy sources;
- Best practices for stakeholder and public engagement in siting ocean energy projects;
- The need for an advanced ocean energy advocacy organization

The tidal industry perspective was then given by John Ferland (ORPC) on current regulatory framework issues. Mr. Ferland commented on how current statute tends to lump conventional hydropower together with tidal. He also mentioned that environmental review standards can be high and costly for new and innovative companies. He also sees a lack of coordination between federal agencies and that these agencies don’t seem to believe in the Federal Energy Regulatory Commission’s pilot project license. It’s seen as FERC’s path, but not necessarily the other agency’s path.

VII. Oil and Gas Subcommittee Report

Robert Marvinney gave a brief update as to the status and outlines of the Subcommittee. Mr. Marvinney would like to have the Task Force endorse a statement that states that oil and gas will be needed in the short term future for transitional purposes and that any additional effort should be focused on areas where there is already existing equipment and/or oil and gas activities.

Much discussion focused on this statement, ranging from keeping the door open to future exploration to making a more determined statement saying that offshore oil and gas exploration, given our economic and security needs to get off oil and gas, that our efforts are better spent on improving our transmission capacity or on investment in alternative energy.

Sean Mahoney, Robert Marvinney, Representative Fitts, and Don Perkins will work on this statement going forward.

VIII. Subcommittees Four and Five: Status and Path Forward

Draft versions of both of the subcommittee's reports were passed around to the Task Force and to the public. Both subcommittees are having issues "gelling" on specific policy recommendations and there is more work that must go into each.

Subcommittee Four DRAFT Report

http://www.maine.gov/spo/specialprojects/OETF/Documents/Subcommittees/Subc4_EconomicDevelopment/subc4_draft_recommendations_TFreport.pdf

Subcommittee Five DRAFT Report

http://www.maine.gov/spo/specialprojects/OETF/Documents/Subcommittees/Subc5_TidalPower/subc5_draft_recommendations_TFrpt.pdf

IX. Discussion of Post-OETF Entity/Organization

Since the start of the OETF, there have been various discussions about what the long-term focus for maintaining an entity after the expiration of the Task Force in October.

Mr. Perkins has proposed a non-profit, public/private organization to replace the Task Force. The proposal consists of NGO's, private sector engineering, private sector development, state agencies, the university, and various other entities. This should be initiated by November and be hosted by a non-profit to start with so that the organization can take advantage of the host's take exempt status.

Questions revolved around why tidal was excluded from the proposal and what types of regulatory power the organization would have (if any).

John Ferland testified to the absence of tidal power from the organization that if the absence is not rectified, ORPC will most likely fall off the map as the Federal government may see this as Maine not endorsing tidal energy.

X. Adjournment