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Submitted to the House Subcommittee on Fisheries, Wildlife and Oceans as part of the legislative oversight hearing on four bills: H.R. 3223 (Allen, D-ME), Keep Our Waterfronts Working Act of 2007; H.R. 5451 (Bordallo, D-GU), the Coastal Zone Reauthorization Amendments of 2008; H.R. 5452 (Capps, D-CA), the Coastal States Renewable Energy Promotion Act; and, H.R. 5453 (Capps, D-CA), the Coastal State Climate Change Planning Act.

Hearing Date: February 28, 2008

TESTIMONY OF CAROLYN ELEFANT,
OREC Legislative and Regulatory Counsel

My name is Carolyn Elefant and I am legislative and regulatory counsel to the Ocean Renewable Energy Coalition (OREC). OREC is the national trade association for the marine renewables energy industry in the United States with a mission of promoting the commercialization of marine renewable technologies such as offshore wind, wave, tidal and current. Founded in April 2005 with three members, OREC now represents forty companies, including marine renewables developers within the United States, Canada and Europe, environmental consultants, law firms, engineering firms, investor owned and municipal utilities and investment bankers. OREC members share the common goal of helping our nation build a domestic marine renewables industry to eliminate our dependence on foreign oil, diversify our energy supply and develop an important source of emission free energy.

OREC is grateful to the House Subcommittee on Fisheries, Wildlife and Oceans for extending an invitation to our organization to participate in these hearings and specifically, to offer testimony on the Honorable Congresswoman Capps' bill H.R. H.R. 5452, the Coastal States Renewable Energy Promotion Act. We support the legislation's goals of streamlining the marine renewables licensing process and most importantly, channeling funding to the states so that they can evaluate proposed marine renewable projects more efficiently while still carrying out their mandate of ensuring responsible and orderly development in coastal zone areas. However, OREC believes that these goals are better achieved through funding for data collection and creation of a designated marine renewables expert position within state agencies rather than the zoning concept described in the legislation.

My testimony is organized in three parts. First, I will describe the present regulatory impediments to marine renewables development. Second, I will discuss some of the problems inherent in the zoning concept and explain why this mechanism is not appropriate, at least right now while the marine renewables industry is in a nascent stage. Third, I will offer alternative suggestions for directing funding to states in a way that will help them carry out their statutory mandate under the CZMA and also help developers identify suitable project sites.

Part I: Regulatory Delays and the Impact on the Industry

To date, regulatory delay and uncertainty poses one of the primary impediments to the emergence of the marine renewables industry. Let me be

clear - regulation poses an obstacle *not* because our member companies seek to evade regulation, but rather, because they are absolutely committed to "doing development right." OREC's member companies have devoted considerable financial resources to complying with the litany of applicable federal, state and local laws and taking into account the interest of multiple stakeholders who use our nation's coastal waters. But complying with so many agencies proves costly – our present statistics show that permitting costs can account for as much as 30 to 60 percent of the total project cost, which is a deterrent to private investment.

The length and uncertainty of the regulatory process also deters private investment. Thus far, companies like Verdant Power or Finavera have spent more than seven years in an effort to obtain authorization to install 6 turbines or four buoys. Part of the lag comes from state agencies – not because they oppose development, but simply because they lack the resources and staff to evaluate these projects. The burden then shifts to developers to gather sufficient information – which can also prove time consuming and expensive. And there is no guarantee of when or if an authorization for the project will issue. OREC is aware of several instances where this regulatory delay and uncertainty has killed private financing arrangements, which is a huge blow to the entire marine renewables industry.

Part II: The Proposed Legislation's Goals

OREC applauds H.R. 5452 for recognizing the critical importance of expeditiously developing marine renewables and the need to streamline the regulatory process. We believe that funding coastal states to survey the elements outlined in Section 2(b) of the legislation[1] will help developers more readily identify suitable sites, thereby cutting down the need for costly information gathering studies. Most importantly, this data will allow coastal states to fulfill their responsibilities in issuing certifications under the CZMA certification more efficiently and confidently.

However, OREC does not support the concept of zoning – at least at this time, when the marine renewables industry is new and so much remains unknown about siting, operation and the environmental effects of projects. Quite simply, a zoning process locks the industry in a place at a time, when flexibility is paramount because technologies are still evolving.

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[1] These elements include surveys of the hydrographic, bathymetric and seismic characteristics of an area, environmental characteristics, other marine uses and availability of infrastructure and transmission to support renewable energy development.

For example, a zoning process might block off an area which at present, lacks transmission access or may appear to have inadequate power potential. But a few years forward, a new technology may emerge that is capable of efficiently capturing the power resource or transmission access may improve. Alternatively, a zoning process may block an area deemed environmentally sensitive. However, a technology might later emerge that could prove compatible with the environmental characteristics of the area.

By freezing conditions in place, zoning also arguably deters the emergence of more benign technologies. If certain areas are permanently off limits, developers have no incentive to innovate and come up with designs that might even have the affect of improving a sensitive area. Many of OREC's members have, over time, improved or changed the design of their projects to respond to environmental considerations, which represents a positive development.

Moreover, while OREC is confident that states would responsibly implement a zoning process, the unfortunate reality is that sometimes, the zoning process is vulnerable to politicization. Stakeholders intent on preventing any renewable development offshore might attempt to unduly influence the zoning process. Though we stress that we do not anticipate this type of mischief, past experiences suggest that it is a possibility.

Finally, a zoning process – particularly one that involves multiple agencies and stakeholders – can take time. OREC is concerned that development of projects would be put on hold pending completion of zoning. Any delay at this time will stop the marine renewables industry and quite likely, send many member companies overseas in search of greener pastures, or more aptly "bluer waters" that will allow for expeditious siting, testing and development of projects.

III. OREC's Preferred Approach

As we have emphasized throughout, we commend the intent of H.R. 5452 and its recognition that states need funding so that they can evaluate the effects, and eventually realize the benefits of marine renewables development in coastal waters. We believe that the legislation will work more effectively in the following manner.

First, states should be given funding to study all of the elements listed in Section 2(b)(1)-(7). States would then make this data available both in-house, to resource agency staff and to developers. Developers could use this data to make informed decisions about where to site a project. For example, where a data survey shows baseline information about an area used by migratory mammals, a

developer could choose to do the following: (1) it could decide to avoid the site entirely or (2) it could site a project there, but realize that it would need to evaluate potential effects and devise mitigation. A rational developer would recognize that option 2 poses more risk than option 1, but a developer might determine that the risk is worthwhile if for example, the resource offers substantial power potential or convenience to transmission. Because marine technology companies still bear the full cost of developing this new technology that will benefit our entire nation, ultimately, they are best suited to make the final decision about siting.

Second, OREC would also like to encourage states to designate specific personnel dedicated to marine renewables development. The legislation might consider suggesting this option. A dedicated marine renewables office within each state coastal planning office will help build a body of institutional knowledge that will expedite certification decisions and give states more confidence in the decisions that they make.

IV. Conclusion

OREC views the state coastal agencies as partners in the development of marine renewables resources. Well staffed, well informed and well funded state agencies that can provide data on the environment and infrastructure allows both states and developers to work together and make informed decisions about marine renewable energy projects in an expeditious manner. For that reason, OREC supports the goals of H.R. 5452.