

November 29, 2010

Dr. Robert Fournier  
c/o Department of Energy

Dear Dr. Fournier:

We commend the Department of Energy on the research and thoughtful analysis that has gone into the Marine Renewable Energy Discussion Paper and Policy Background Paper. We also commend the Department on the commitments made in the document such as the following:

*The province is also committed to a staged development of this industry, one that allows it to develop in a sustainable manner, putting a priority on the health and safety of the public, environmental protection, and the conservation of natural resources. (p. 2 of Discussion Paper)*

We agree that the key discussion will be about the legislative and jurisdictional arrangement that will be established to regulate marine renewable energy. We realize that one of the options is to expand the responsibilities of the CNSOPB and amend or replace the supporting provincial and federal legislation. In our dealings with the Petroleum Board we have noted serious structural flaws which have not allowed the Board to take a balanced approach and have put the interests of petroleum development ahead of conservation, health and safety (see [http://www.cnlopb.nl.ca/ohsi\\_information.shtml](http://www.cnlopb.nl.ca/ohsi_information.shtml)) or the interests of other existing marine industries. One of the biggest problems has been the issuance of licences in the absence of any more comprehensive approach to marine spatial planning. The marine renewable energy industry should not proceed until an integrated management process and structure is in place on the water, on paper is not enough.

We applaud the government on its consideration of other jurisdictions. We encourage the government to consider such approaches as staggered openings, renewable energy zones, ranking of technologies as to their environmental impact, the development of provincial coastal legislative framework and other measures which would emerge from an integrated management approach.

We want to do our part to ensure that Nova Scotia gets it right. While getting it right may take a little longer in the short-term, the benefits will be manifest in the long-term. We have attached our comments. In addition, we are planning to hold a workshop on possible regulatory structure with the East Coast Environmental Law Association in the New Year and will be in touch with the Department as plans progress.

Sincerely,

Mark Butler  
Policy Director

To: Dr. Robert Fournier,  
From: Jamie Thompson, Energy Issues Committee  
Jennifer Graham, Coastal Issues Committee  
Shannon Arnold, Marine Issues Committee  
Date: 29, November, 2010  
Re: Marine Renewable Energy Legislation for Nova Scotia

Marine energy systems offer economic and energy security benefits. Critically, they also offer the potential for energy with limited environmental impact. The central activity to assure responsible and effective development of marine renewable energy will be the development of an integrated plan to oversee the preservation, allocation and use of marine and coastal resources. Through such an effort, Nova Scotia will be able to resolve present practice with both the desire for new uses in the future and most importantly, continued availability of a diverse, rich and viable marine ecosystem.

Direct responses to the discussion paper questions follow:

- 1) Opportunity: legislation development for renewable energy offers four main opportunities for Nova Scotians. In addition to the obvious benefits of locally generated low greenhouse gas energy, improved energy security and distributed provincial economic development and employment, this legislation offers the opportunity to develop an overarching approach to sustainable use of our marine environment.

While Tidal energy development seems to be driving this process, it is imperative to consider tidal a special case of particular interest in the Fundy basin. Tidal power remains technically challenging and of largely unstudied marine impact. Wind energy and potentially wave power offer less intrusive energy uses of the marine environment and offer significant clean energy and development potential. New policy

should not discount the future importance of these technologies, their potential impact and potential synergy with the marine environment conservation.

- 2) Challenges: Use of the marine environment forms the foundation of Nova Scotia's very existence. Yet a decade into the 21<sup>st</sup> century we are without a locally administered and coordinated policy for sustained use of our principal environmental resource. The history of aggressive exploitation and collapse cannot be revisited frequently enough until all citizens, communities and commercial interests have agreed upon a policy to govern fair and sustainable use of our marine resources. The Government of Nova Scotia must use the emerging demand for energy use of the marine environment to undertake the legislation of an integrated plan for continued and lasting management of the marine and coastal environment. This must include thorough examination of all present and anticipated marine environment use as well as development of a process to allocate new uses and, where necessary, compensate displaced uses. The 2007 Expert Joint Federal Provincial Panel on the proposed White Point Quarry urged Nova Scotia to develop a Coastal Framework on which to base decisions about new and existing activities in coastal areas. Development of a Coastal Act or an Integrated Coastal Area Management plan or other similar allocations is the only policy choice that is fair to past present and future Nova Scotians.
- 3) Global Experiences: The discussion paper offers several examples of how the marine renewable energy sector has developed elsewhere. The overview, however, falls short of a full survey and risks suffering from an overly selective review. In the interests of full public discussion and identifying best case policy, more extensive review and publication of a summary of global coastal policies would be of benefit to Nova Scotians. In particular, the policies of Denmark, the Netherlands, Germany, Portugal, Spain and the states of the Atlantic

Coastal and Pacific Northwest States of the USA may offer further policy insight.

- 4) **Development Frameworks:** As identified in the context of policy challenges, discussed above, renewable energy development must take place within an overarching policy that coordinates and allocates marine environmental uses. Understanding that this may take some time, small scale experimentation should be considered on a case by case basis for the purposes of technology demonstration and independent impact assessment.
- 5) **Community Participation:** Resource development without benefit to local communities is counter productive. Without involvement, development will subtract from local resilience and breed division between provincial communities. Renewable energy project participation must, therefore, include active community ownership of new local renewable energy developments at any scale. Projects should require a community partner either through the CEDIF or cooperative model.
- 6) **Planning:** Project development must balance the urgency inherent with commercial timelines and the necessary caution implied when advancing community development. Although it is understood that change is constant, it likewise true that many communities have survived through cautious and evolutionary processes, testing and learning from new technology before abandoning established practices. It is important, therefore to go slow.

Developmental and small scale projects will demonstrate the advantages of marine renewable development and will identify community support. Regardless, there will be conflicts and it is fair that loss of resource use due to a development must be compensated, either through project involvement or direct compensation. Beyond

direct compensation, there must be public community consultation during the project definition and final approval.

The planning process will be considerably less fractious if, in advance, a coordinated examination and allocation of use of the marine area has been established. Once again, the imperative for establishing a provincial Coastal Act and an Integrated Coastal Area Management plan is evident.

- 7) Economic Opportunities: As stated above, benefits from the extraction of resources must flow to the community. Community partnership that brings lasting community benefit must be mandatory so that there is a net community benefit.
- 8) Environmental Issues: Renewable energy in the marine environment cannot be considered alone nor should the complex regulatory environment be substantially altered or streamlined for what may be a wide ranging use of the marine and coastal environment. The desire for marine energy should be used to develop a Coastal Act and Integrated Coastal Area Management Plan. This plan would form the central tool to coordinate across jurisdictional lines so that the marine environment and its underpinning ecological diversity can be sustained for the continued benefit of Nova Scotians.

There is a requirement for independent assessment, monitoring and research on the impacts of marine energy systems. Public acceptance of marine energy systems will be characterized by cynicism and skepticism should this effort be left to proponents or the economic development agency. Moreover, the research should be substantial and ongoing so that impacts of marine energy systems can be continually assessed for future sustainability and resource conflicts.

This effort must fall to the provincial and federal jurisdictions to fund. This work alone can be considered of economic benefit as monitoring, assessment and understanding marine environments in and of themselves represent an

exploitable knowledge base that can be marketed globally. While this work has economic value, it should fall to the permitting and licensing structure to fund this effort once marine renewable technologies reach commercial scale.

9) Health and Safety: The primary requirement to ensure good health and safety working conditions in the marine environment is that the responsible agency be independent from proponents and regulatory agencies. Here again multi-jurisdictional overlap occurs. Coordinated or integrated health and safety oversight is recommended to avoid conflicting requirements and processes. Recommendations drawn from historical and more recent inquiries should be incorporated.

10) Rights Allocation: Rights should be allocated through a strategic and systematic approach as recommended in the background paper. This is best accomplished under the auspices of an overall Integrated Coastal Area Management plan as highlighted above. Staged, gradual development of priority areas will permit understanding and monitoring of the effects of various marine energy systems and permit moderation of policies associated with their implementation.

An allocation system based on selected strategic use or coordinated development best suits the use of the marine resource. First come approaches or open proposal calls leads to economic optimism among proponents and community opposition due to accelerated time frames and the desire of proponents to hold much project information confidential.

10) Regulatory Issues: The background paper observations that a lead integrated regulatory authority that harmonizes jurisdictional requirements offers the best method to ensuring that development is sound. Development of any marine development should be subject to independent review and regulation but should not be needlessly burdened with repeated and redundant multi-jurisdictional approval and review. Furthermore, it is critical that economic interests be separate from the regulatory processes. As with Health and Safety considerations, a separate entity is required to assure that the regulatory obligations are not subsumed by economic interests.