

**WRITTEN TESTIMONY OF
TIMOTHY R.E. KEENEY
DEPUTY ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON
RENEWABLE ENERGY OPPORTUNITIES AND ISSUES ON THE OUTER
CONTINENTAL SHELF**

**BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES**

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Madam Chairwoman and Members of the Committee, thank you for inviting me to appear before you today. I am Timothy Keeney, Deputy Assistant Secretary for Oceans and Atmosphere at the National Oceanic and Atmospheric Administration (NOAA), in the Department of Commerce. I am pleased to be here today to discuss with you NOAA's interest and roles in alternate energy and related uses in the outer continental shelf (OCS). NOAA and the Department of Commerce take our stewardship responsibilities very seriously, and we also recognize the need for an environmentally safe supply of energy. Per Executive Order 13212, it is Administration policy for agencies to "take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy."

Energy Policy Act of 2005, Section 388:

As you are aware, Section 388 of the *Energy Policy Act of 2005 (EPA Act)* placed jurisdiction over "Alternate Energy-Related Uses of the Outer Continental Shelf" with the Minerals Management Service (MMS) of the Department of Interior. As you have heard [will hear] from my friend from the Department of the Interior, MMS is currently in the process of mapping out a regulatory process, in consultation with the Department of Commerce and other agencies and state governments. MMS has recently published in the *Federal Register* a Draft Programmatic Environmental Impact Statement (DEIS), which is currently out for public review and comment. NOAA's National Marine Fisheries Service (NMFS) and National Ocean Service (NOS) are in the process of reviewing the DEIS and will be providing comments in the near future. NOAA also is an *ex officio* member of the MMS Outer Continental Shelf Policy Committee, and its Alternate Use of the OCS Subcommittee, so we are in close consultation with our colleagues at MMS as they develop a regulatory scheme for alternate energy and related use of the OCS.

To illustrate NOAA's important role in the regulation of offshore activities, it may be useful to describe existing interagency efforts. Section 388 of *EPA Act*, referred to above, gave the Secretary of the Interior discretionary authority over energy-related and other authorized marine-related activities not otherwise authorized in the OCS Lands Act, the *Deepwater Ports Act* of 1974 (*DPA*), or the *Ocean Thermal Energy Conversion Act* of 1980 (*OTEC*). As I will outline in my testimony, NOAA has an active role in each of these two regulatory schemes.

Deepwater Ports Act of 1974:

The *DPA* allows for the licensing of deepwater ports in the Exclusive Economic Zone (EEZ) along all maritime coasts of the United States. Numerous energy corporations have submitted applications or have announced their intentions to apply for deepwater port licenses, primarily for liquefied natural gas. In 2004, consistent with Executive Order 13212 and cooperation necessitated by the *DPA*, NOAA joined other agencies with regulatory responsibilities relevant to deepwater ports in developing and signing an MOU to expedite actions on pending and future applications for licensing deepwater ports.

To describe NOAA's regulatory interests in deepwater facilities, I will very briefly discuss some of the authorities NOAA is charged with executing. NMFS is responsible for a variety of activities in marine and coastal ecosystems as mandated by several statutes and authorities. These activities include managing protected species, managing commercial and recreational fisheries, and protecting marine and coastal habitats. These activities are conducted pursuant to a number of environmental laws including the *Endangered Species Act*, *Marine Mammal Protection Act*, *Magnuson-Stevens Fishery Conservation and Management Act*, and the *Fish and Wildlife Coordination Act*. Deepwater port construction and operation in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project proposed. Federal agencies authorizing activities that may affect any of these resources are required to consult with NOAA Fisheries regarding adverse affects to these resources and habitats upon which they depend.

NOS is responsible for various coastal and ocean programs that may be relevant to deepwater ports. NOS administers the *Coastal Zone Management Act (CZMA)* and approves and works with states to implement comprehensive Coastal Management Programs and National Estuarine Research Reserves and mediates disputes regarding *CZMA* issues. Under *CZMA* Section 307(c)(3)(A), affected states must concur with consistency certifications submitted with deepwater port applications before federal agencies can issue their permits. NOS also manages designated National Marine Sanctuaries (NMS) and coastal protection and restoration activities. While oil and gas activities are mostly prohibited within NMS, pursuant to Section 304(d) of the *National Marine Sanctuaries Act*, federal actions near NMS may require consultation with the Secretary of Commerce. NOS also may be able to provide technical assistance related to nautical charts, coastal observing stations, geographic information systems capabilities, and tide and current information.

The *DPA* sets forth the criteria that the Secretary of Transportation should use to permit a facility located in the EEZ, and includes a requirement to consult with NOAA on the potential environmental impacts. Additionally, the environmental stewardship statutes referenced above require federal departments to consult with NOAA on federal actions that could impact protected species and resources. The purpose of these laws is to ensure that proper balance is given to issues such as energy security and regional and national economic matters and issues such as navigational safety and the protection of trust resources and the environment.

In this interagency process, NOAA makes recommendations and provides comments on potential effects to protected resources, as well as possible mitigation measures. The Department of Transportation, through the Maritime Administration (MARAD), has the policy and legal discretion to give appropriate weight to the environmental recommendations of NOAA and to permit the facility when the Secretary “determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality.”

NOAA works closely with MARAD and the U.S. Coast Guard to develop measures the applicant must adopt in order to mitigate potential effects on protected species and resources. This interagency process is fairly new, and is not without challenges, but it is a process that provides some illumination to the various and often complex statutes taken into consideration when licensing new offshore activities.

Ocean Thermal Energy Conversion Act of 1980:

In the late seventies, there was also a period of interest in alternative energy sources. One of those alternatives — ocean thermal energy conversion (OTEC) — is a process that uses the heat energy stored in the warm surface waters of the world's oceans to produce electricity or other energy-intensive products. The *Ocean Thermal Energy Conversion Act of 1980 (OTEC Act)*, gave NOAA lead responsibility for licensing the construction, ownership, location and commercial operation of OTEC plants.

The *OTEC Act* directed the administrator of NOAA to establish a stable legal regime to foster commercial development of OTEC. In addition, the *OTEC Act* directed the secretary of the department in which the U.S. Coast Guard is operating to promote safety of life and property at sea for OTEC operations, prevent pollution of the marine environment, clean up any discharged pollutants, and prevent or minimize any adverse impacts from the construction and operation of OTEC plants. In addition, the *Act* was designed to ensure that the thermal plume of an OTEC plant does not unreasonably impinge on, and thus degrade, the thermal gradient used by any other OTEC plant or facility, the territorial sea, or an area of national resource jurisdiction of any other nation. An exception would be made, however, if the Secretary of State had approved such an impingement after consultation with a nation. The *OTEC Act* also assigns responsibilities to the Secretary of State and the Secretary of Energy regarding OTEC plants.

There has been a low level of activity under the *OTEC Act* since its passage in 1980. Following NOAA's initial environmental studies and implementation of a licensing program, NOAA has not received any license applications for OTEC facilities or plantships. The availability and the relatively low prices of fossil fuels, coupled with the risks to potential investors, have limited the interest in commercial development of OTEC projects. The need to protect the environmental quality of ocean resources and ecosystems may outweigh the benefits of constructing OTEC facilities in certain areas. Moreover, OTEC projects have offered an unclear return on a significant investment. (Source: Year of the Ocean Discussion Papers, 1998)

Conclusion

NOAA has a well-established history of working with agency partners to ensure our ocean and coastal resources receive due consideration in the development of regulatory regimes for emerging and existing technologies that are in our nation's best interest. I look forward to continuing our close collaboration with MMS and other participating federal agencies in developing this process. Thank you for your time and consideration. I would be happy to answer any questions you might have.