

Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf: Final Rule

Environmental Assessment

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FINDING OF NO SIGNIFICANT IMPACT

The U.S. Department of the Interior, Minerals Management Service (MMS) has prepared an environmental assessment (EA) that analyzes a proposed action to promulgate regulations for the Renewable Energy and Alternate Use (REAU) Program. The MMS prepared the EA to determine whether promulgation of the final rule will have a significant effect on the human environment and whether an environmental impact statement (EIS) must be prepared.

The REAU Program was established following passage of the Energy Policy Act of 2005 which amended the Outer Continental Shelf Lands Act and granted the Secretary of the U.S. Department of the Interior the authority to issue leases, easements, or rights-of-way for activities on the Outer Continental Shelf that produce or support the production, transportation, or transmission of energy from sources other than oil and gas. The MMS prepared a Programmatic EIS that examined the potential environmental effects of a REAU program, prior to its establishment. The Programmatic EIS examined the proposed action which was the establishment of a REAU program that had formal regulations to ensure that the discretionary issuance of leases and grants was governed by detailed procedures to ensure that authorized activities were conducted safely and with minimal effects on the environment. This EA incorporates by reference the relevant materials in the Programmatic EIS. Based on the analyses of the effects of the promulgation of the final rule, the EA concludes that there are no significant impacts to the environment from the final rule because it merely sets forth the requirements under the REAU Program for administrative functions, such as the issuance of leases and the submittal of plans for activities conducted on leases and grants. Many provisions of the final rule are designed to lessen environmental impacts. Any MMS proposal to issue a lease or grant for specific alternative energy or alternate use activities under the REAU Program must undergo a new environmental analysis pursuant to the requirements of the National Environmental Policy Act.

Based on the analyses in the EA, no significant effects on the human environment have been identified that would result from promulgation of the final rule. Therefore, MMS has determined that an EIS is not required and is issuing this Finding of No Significant Impact.

Supporting Document

Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007 (available upon request and at ocsenergy.anl.gov)

(acting)



James K. Kendall
Chief, Environmental Division

4/17/09

Date

Proposed Action: The proposed action in this environmental assessment is the promulgation of regulations for the MMS Renewable Energy and Alternate Use Program on the Federal Outer Continental Shelf

Area: Outer Continental Shelf

Responsible

Agency: Minerals Management Service (MMS)
1849 C Street, NW
Washington, D.C. 20240

Designation: Environmental Assessment

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Abstract: The environmental assessment (EA) evaluates the promulgation of the final rule for the Renewable Energy and Alternate Use Program. The final rule addresses the process by which MMS will authorize renewable energy and alternate use projects on the Outer Continental Shelf. The EA references the Programmatic Environmental Impact Statement titled *“Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.”*

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1 INTRODUCTION

This environmental assessment (EA) analyzes the final rule for the Minerals Management Service (MMS) Renewable Energy and Alternate Use Program. Section 388 of the Energy Policy Act of 2005 (EPA) amended the Outer Continental Shelf Lands Act (OCSLA) as amended (43 United States Code [U.S.C.] 1331 et seq.) to grant the Secretary of the U.S. Department of the Interior (Secretary) the discretionary authority to issue leases, easements, or rights-of-way (ROW's) for activities on the Outer Continental Shelf (OCS) that produce or support production, transportation, or transmission of energy from sources other than oil and gas. The Secretary delegated this authority to the MMS. Examples of potential renewable energy projects include, but are not limited to, wind energy, wave energy, ocean current energy, solar energy, and hydrogen production. The MMS prepared a programmatic environmental impact statement (EIS) to evaluate the establishment of a comprehensive, nationwide MMS Renewable Energy and Alternate Use Program on the Federal OCS through rulemaking. (i.e., *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007* (U.S. Department of the Interior [USDOI], MMS, 2007). The Programmatic EIS can be viewed on the MMS website at ocsenergy.anl.gov. The Programmatic EIS was published prior to the completion of the rule and was used to inform MMS during the preparation of the proposed rule. This EA was prepared to determine whether or not promulgation of the final rule will have a significant effect on the human environment and whether an EIS must be prepared. This EA incorporates by reference all relevant material in the Programmatic EIS.

This final EA analyzes the environmental impacts associated with the final rule and is being published along with the rule. The MMS published a draft EA (USDOI, MMS, 2008) along with the proposed rule for the MMS Renewable Energy and Alternate Use Program. Comments were received on the draft EA together with the proposed rule. Only comments that were specifically addressed to the EA are included in section 5 of this EA as well as MMS's responses. Comments about the proposed rule are addressed in the preamble of the final rule. Any modifications to the rule based on comments about the rule are addressed in this EA as changes to the rule and not as responses to the comments.

2 PROPOSED ACTION

The proposed action examined in this EA is the promulgation of the regulations for the MMS Renewable Energy and Alternate Use Program on the Federal OCS. The proposed action includes formal regulations for the granting of rights and management of activities conducted on a lease, easement, or ROW on the OCS including site characterization, technology testing, construction, operation, and decommissioning.

The EPA amended section 8 of the OCSLA (43 U.S.C. 1337) to give the Secretary authority to issue a lease, easement, or ROW on the OCS for activities that are not otherwise authorized by the OCSLA, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean

Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law if those activities:

- Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or
- Use, for energy-related purposes or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCSLA, with the exception that any oil and gas energy-related uses shall not be authorized in areas in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium.

The two components of the proposed action—development of renewable energy resources on the OCS and the alternate use of existing structures on the OCS—are described in the following sections.

While the MMS is the lead agency for authorizing OCS renewable energy and alternate use activities, we recognize that other Federal agencies have regulatory responsibility in such activities. The new authority does not expressly supersede or modify existing Federal laws, and all activities must comply fully with such laws. For instance, FERC has exclusive jurisdiction to issue licenses for hydrokinetic projects under Part I of the Federal Power Act and issue exemptions from licensing under Section 405 and 408 of the Public Utility Regulatory Policies Act of 1978 for the construction and operation of hydrokinetic projects on the OCS. However no FERC license or exemption for a hydrokinetic project on the OCS shall be issued before MMS issues a lease, easement, or right-of-way. The MMS possesses the exclusive authority to issue leases, easements, and rights-of-way for renewable energy projects on the OCS.

2.1 Purpose and Need

The proposed action is the promulgation of the regulations for the MMS Renewable Energy and Alternate Use Program on the Federal OCS. The purpose of this action is to develop a formal, comprehensive regulatory program implementing the MMS's new authority to grant access rights through a lease, easement, or ROW on the Federal OCS and to issue any necessary regulations pursuant to subsection 8(p) of the OCSLA. The decision to undertake a leasing program was made in the Record of Decision on the Programmatic EIS of January 10, 2008. Whether to issue leases, ROW's, and rights-of-use and easement (RUE's) is not an issue to be resolved by this rulemaking. Rather, the rule addresses how such leasing will occur and under what procedures lessees will be allowed to use their leases. Agency action is needed in order to provide for the efficient and orderly regulation of renewable energy projects on the Federal OCS, as well as alternate use of structures for other energy- and marine-related activities, through a defined process with detailed procedures to ensure that these activities are conducted safely and with minimal impact to the environment. The proposed action is also needed to augment and diversify the Nation's energy supplies and to allow conversion of existing structures to other purposes in an environmentally sound manner.

2.2 Overview of the MMS Renewable Energy and Alternate Use Program

The following is taken in part from the preamble to the final rule. To accommodate the regulations to support the Renewable Energy and Alternate Use Program, the MMS will add a new part to subchapter B of title 30 of the Code of Federal Regulations (CFR). The new part 285 will be entitled “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf” and will address the requirements of section 388(a) of the EPLA, which amended the OCSLA to add section 8(p) (43 U.S.C. 1337(p)). In the proposed rule the new part 285 was titled, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf. We now use the term “renewable energy” instead of “alternative energy” because it is a more common and more easily understood by the industry and general public.

Approach to Rulemaking

The MMS developed the rule to provide a regulatory framework for leasing and managing OCS renewable energy project activities and authorizing activities that involve the alternate use of OCSLA-permitted facilities. The rule is also intended to encourage the orderly, safe, and environmentally responsible development of renewable energy sources on the OCS. The MMS expects that renewable energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of renewable energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. The rule is intended to allow for a broad spectrum of renewable energy development without specific requirements for each type of energy production.

Following the publication of the rule, MMS will publish a guidance document to support the rule. This guidance document will provide more details on the program and will describe the type of information that should be included in various plan submittals.

This final rule (30 CFR part 285) applies to all aspects of the Renewable Energy and Alternate Use Program except for the procedures applying to appeals of MMS decisions or orders, which are set forth in 30 CFR part 290, subpart A. The MMS revised § 290.2 to explain that MMS decisions on bids under the program are exempt from the appeals process at 30 CFR part 290 and are covered under § 285.118(c). Section 285.118(c) describes how a bidder, whose high bid for a renewable energy lease, ROW grant, RUE grant, or Alternate Use RUE was rejected, may apply to the Director of MMS (Director) for reconsideration.

Overview of the Project Development Process

Types of Access Rights

The MMS will issue leases for access rights for commercial development and site assessment and technology testing. Rights of way and RUE grants will be issued for activities that support renewable energy development. The MMS will issue a special grant, the Alternate Use RUE, for activities that use an existing facility.

Commercial and Limited Leases

The MMS will issue two types of leases: (1) commercial and (2) limited. A commercial lease authorizes access to an area on the OCS and provides the rights necessary to produce, sell, and deliver power generated by renewable energy activities. A commercial lease provides the lessee the necessary rights to apply for and receive the authorizations needed to assess, test, and produce renewable energy on a commercial scale over the long term (approximately 30 years). A commercial lease includes the right to a project easement, which will be issued to allow the lessee to install gathering, transmission and distribution cables to transmit electricity; pipelines to transport other energy products (i.e., hydrogen); and appurtenances on the OCS as necessary for the full enjoyment of the lease. The project easement will be issued upon approval of the Construction and Operations Plan for commercial leases or a General Activities Plan for limited leases.

A limited lease authorizes access to an area on the OCS and provides the rights necessary to conduct activities on the OCS that support the production of energy but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use exceeding a limit specified in the lease. Limited leases may be issued for site assessment purposes only or for site assessment and development and testing of new or experimental renewable energy technology. Limited leases will be issued for a short term, 5 years. Under the provisions of the rule, limited leases may be renewed, but they cannot be converted to commercial leases. If the holder of a limited lease wished to pursue commercial development on the OCS, the leaseholder must obtain a new commercial lease through the leasing process, as defined in the rule. In a change from the proposed rule, MMS will permit limited leases that generate power during technology testing to sell that power within set limits described in the lease terms and conditions. For example, a limited lease may include the authorization to sell electricity up to 5 megawatts total installed capacity produced during the testing of experimental ocean current turbine generators. This revision to the rule may make it easier for the holder of a limited lease to recoup some of its project expenses.

RUE Grants and ROW Grants

The MMS will issue RUE grants authorizing the use of a designated portion of the OCS to support renewable energy activities on an MMS lease or other approval, e.g., a State issued lease.

An ROW grant will be issued by MMS to allow for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other renewable energy product. An ROW grant could be used to transport electricity from a State lease on State submerged lands to shore or from one State to another State through a transmission line that must cross the Federal OCS. An ROW is not the same as a project easement issued with a renewable energy lease.

Alternate Use RUE

The MMS will issue an Alternate Use RUE for energy- or marine-related uses of an existing OCS facility for activities not otherwise authorized by the OCSLA or other applicable law. See the preamble of the final rule at subpart J, for more details regarding Alternate Use RUE's.

Obtaining Access Rights

The EPO Act requires MMS to award leases, ROW grants, and RUE grants competitively, unless MMS makes a determination of no competitive interest. In conjunction with the competitive leasing process, MMS will prepare the National Environmental Policy Act (NEPA) documents and other environmental compliance documents. After receiving a request for a lease or grant and MMS determining that it will proceed with the lease or grant issuance process, MMS will put forth a request for interest, designate the lease or grant area, and publish in the Federal Register all other notices and calls relating to the sale. If, after putting forth a request for interest, MMS determines that there is no competitive interest in that particular OCS area, MMS may proceed in issuing a lease or grant noncompetitively. Whether a project proponent acquires a lease or grant competitively or non-competitively, it must comply with all MMS lease stipulations or conditions in the grant.

Federal Compliance for the Leasing Process

All activities permitted by MMS must comply with all relevant Federal laws, regulations, and statutes, including, but not limited to those described in Table 1 below.

Table 1. Federal Legal Authorities Relevant to Activities on the OCS

Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
Council on Environmental Quality	National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.)	Requires Federal Agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment, and to consider renewables to such proposed actions.
U.S. Fish and Wildlife Service (FWS); National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS)	Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.)	Requires Federal Agencies to consult with the FWS and the NMFS to ensure that proposed Federal actions are not likely to jeopardize the continued existence of any species listed at the Federal level as endangered or threatened, or result in the destruction or adverse modification of critical habitat designated for such species.
FWS (walrus, sea and marine otters, polar bears, manatees, and dugongs); NMFS (seals, sea lions, whales, dolphins, and porpoises)	Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361-1407)	Prohibits, with certain exceptions, the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States.
NMFS	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act) (16 U.S.C. 1801 et seq.)	Requires Federal Agencies to consult with the NMFS on proposed Federal actions that may adversely affect essential fish habitats that are necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.

Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (ACOE); NOAA	Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq.)	Prohibits, with certain exceptions, the dumping or transportation for dumping of materials including, but not limited to, dredged material, solid waste, garbage, sewage, sewage sludge, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and other waste into ocean waters without a permit from the EPA. In the case of ocean dumping of dredged material, the ACOE is given permitting authority.
NOAA	National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.)	Prohibits the destruction, loss of, or injury to any sanctuary resource managed under the law or permit and requires Federal Agency consultation on Federal Agency actions, internal or external, to national marine sanctuaries, that are likely to destroy, injure, or cause the loss of any sanctuary resource.
FWS	Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712); Executive Order (E.O.) 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” (January 10, 2001)	Requires that Federal Agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of Understanding with the FWS, which, among other things, ensure that environmental reviews mandated by NEPA evaluate the effects of agency actions on migratory birds, with emphasis on species of concern.
NOAA’s Office of Ocean and Coastal Resource Management (NOAA’s OCRM)	Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.)	Specifies that coastal States may protect coastal resources and manage coastal development. A State with a coastal zone management program approved by NOAA’s OCRM can deny or restrict development off its coast, if the reasonably foreseeable effects of such development would be inconsistent with the State’s coastal zone management program.
The Federal Energy Regulatory Commission (FERC)	The Federal Power Act (16 U.S.C. 792 et. seq.); the Public Utility Regulatory Policies Act (16 USC 2701 et. seq.)	Prohibits any person, State, or municipality, for the purpose of developing electric power, to construct operate, or maintain any power house, or other works incidental thereto in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States, except in accordance with a license granted pursuant to the FPA; Allows FERC to grant an exemption in whole or in part from the requirements (including the licensing requirements) of part I of the Federal Power Act

Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
EPA; MMS	Clean Air Act, as amended (42 U.S.C. 7401 et seq.)	<p>Prohibits Federal Agencies from providing financial assistance for, or issuing a license or other approval to, any activity that does not conform to an applicable, approved implementation plan for achieving and maintaining the National Ambient Air Quality Standards (NAAQS).</p> <p>Requires EPA (or an authorized State agency) to issue a permit before construction of any new major stationary source or major modification of a stationary source of air pollution. The permit—called a Prevention of Significant Deterioration Permit for stationary sources located in areas that comply with NAAQS and a Nonattainment Area Permit in areas that do not comply with NAAQS—must control emissions in the manner prescribed by EPA regulations to either prevent significant deterioration of air quality (in attainment areas), or contribute to reducing ambient air pollution in accordance with an approved implementation plan (in nonattainment areas).</p> <p>Requires the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a Risk Management Plan to EPA.</p> <p>In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCSLA for clean air regulations.</p>
EPA; U.S. Coast Guard (USCG); MMS	Clean Water Act (CWA), section 311, as amended (33 U.S.C. 1321); E.O. 12777, “Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990”	<p>Prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or the waters of the contiguous zone, or in connection with activities authorized under the OCSLA, or which may affect natural resources belonging to the United States.</p> <p>Authorizes EPA and the USCG to establish programs for preventing and containing discharges of oil and hazardous substances from nontransportation-related facilities and transportation-related facilities, respectively.</p> <p>Directs the Secretary of the Interior (MMS) to establish requirements for preventing and containing discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports.</p>
EPA	CWA, sections 402 and 403, as amended (33 U.S.C. 1342 and 1343)	Requires a National Pollutant Discharge Elimination System Permit from EPA (or an authorized State) before discharging any pollutant into territorial waters, the contiguous zone, or the ocean from an industrial point source, a publicly owned treatment works, or a point source composed entirely of storm water.
ACOE; EPA	CWA, section 404, as amended (33 U.S.C. 1344)	Requires a permit from the ACOE before discharging dredged or fill material into waters of the United States, including wetlands.

Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
USCG	Ports and Waterways Safety Act, as amended (33 U.S.C. 1221 et seq.)	Authorizes the USCG to implement, in waters subject to the jurisdiction of the United States, measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include, but are not limited to: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways.
ACOE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.)	Section 10 (33 U.S.C. 403) delegates to the ACOE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the United States. The OCSLA extends the jurisdiction of the ACOE, under section 10, to the seaward limit of Federal jurisdiction.
EPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.)	Requires waste generators to determine whether they generate hazardous waste and, if so, to determine how much hazardous waste they generate and to notify the responsible regulatory agency. Requires hazardous waste treatment, storage, and disposal facilities (TSDF's) to demonstrate in their permit applications that design and operating standards established by the EPA (or an authorized State) will be met. Requires hazardous waste TSDF's to obtain permits.
National Park Service (NPS); Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469-469c-2)	Requires each Federal Agency to consult with the Advisory Council on Historic Preservation and the State or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located; authorizes the USDOJ Secretary to undertake salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or Tribal Historic Preservation Office	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); E.O. 13007, "Indian Sacred Sites" (May 24, 1996)	Requires Federal Agencies to facilitate Native American access to and ceremonial use of sacred sites on Federal lands, to promote greater protection for the physical integrity of such sites, and to maintain the confidentiality of such sites, where appropriate.
Federal Aviation Administration (FAA)	Federal Aviation Act of 1958 (49 U.S.C. 44718); 14 CFR part 77	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA, as necessary, to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

NEPA Compliance

The goal of the NEPA process is to help public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. It provides the tools to carry out this goal by mandating that every Federal Agency prepare a study of the impacts of proposed major Federal actions significantly affecting the quality of the human environment and provide alternatives to the proposed action. The NEPA requires that each Agency make that information an integral part of its decisions. The

NEPA also requires that Federal Agencies make a diligent effort to involve the interested and affected public before they make decisions regarding proposed major actions that would have impacts on the environment.

The MMS will be the lead Federal agency for any necessary NEPA compliance reviews related to leases, easements, and rights-of-way issued or granted on the OCS. Some of the information MMS requires under the final rule supports other Federal Agencies' information requirements associated with compliance with the laws and regulations that they enforce.

Coastal Zone Management Act (CZMA) Compliance

Each coastal State has a federally-approved coastal management plan (CMP). In compliance with the CZMA, when MMS conducts a competitive lease sale for leases or grants, MMS will determine if the sale activity is reasonably likely to affect any land or water use or natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination (CD) to the affected State(s) at least 90 days before the lease sale. This CD will include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the State's CMP. For a competitive lease sale, the CD will also cover site assessment activities. If the affected State(s) agrees with MMS's determination, the MMS may proceed with the competitive sale. If the affected State(s) disagrees, the MMS will follow the procedures as outlined in 15 CFR part 930, subpart C.

In the CMP, the States list Federal licenses and permits which are reasonably likely to affect coastal uses or resources and require a Federal consistency review. Listed activities must be conducted in a manner that is consistent with the enforceable policies of the State's CMP, and the applicant must submit a Federal consistency certification to the State and approving Federal Agency. Also, the State may ask NOAA's OCRM permission to review, for consistency, activities that are not listed in its CMP. If NOAA approves the request, the applicant is required to submit a consistency certification for the unlisted Federal license/permit. In compliance with CZMA mandates, the MMS will not issue noncompetitive leases or approve noncompetitive grants or plans if: (1) consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. Table 2 summarizes the NEPA and CZMA compliance requirements for leases and grants.

Table 2. NEPA and CZMA Requirements for Leases and Grants

Activity	MMS Process	NEPA Documentation	Lease or Grant Conditions	CZMA
Leases				
Competitive lease sale.	Conduct competitive lease sale and issue leases.	Covers lease sale area and site assessment activities.	Stipulations, mitigation, and conditions established in lease contract.	Covers a Federal Agency activity and must comply with 15 CFR part 930, subpart C.

Noncompetitive lease.	Negotiate noncompetitive lease and issue decision on the Site Assessment Plan (SAP) or General Activities Plan (GAP).	Covers identified noncompetitive lease area and proposed activities in the SAP or GAP.	Stipulations, conditions, mitigation, and monitoring established in lease and SAP or GAP.	Covers a non-Federal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.
Grants				
Competitive ROW grants and RUE grants.	Conduct competitive ROW grant or RUE grant sale and issue grants.	Covers ROW grant- and RUE grant-specific sale area.	Stipulations and conditions established in grant award.	Covers a Federal Agency activity and must comply with 15 CFR part 930, subpart C.
Non-competitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate GAP.	Covers identified noncompetitive grant site and proposed activities in the GAP.	Stipulations, conditions, mitigation, and monitoring established in grant award and GAP.	Covers a non-Federal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.

Development Process

Developing Leases and Grants

The holder of a lease, ROW grant, or RUE grant must submit certain plans to MMS for development of the lease or grant. The various plans serve as a blueprint for site development, construction, operations, and decommissioning. The MMS has specific requirements for each phase of a lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease will require the applicant to submit an SAP and receive MMS approval of that plan before beginning those activities. The SAP will undergo the appropriate NEPA reviews and may require either an EIS or an EA. The SAP must demonstrate how a lessee will conduct the proposed activities to comply with relevant Federal statutes such as the CZMA, ESA, MMPA, and CWA.

For a commercial lease, after a lessee performs site assessment activities, a lessee is required to submit and receive MMS approval of a Construction and Operations Plan (COP) before a lessee may begin any construction and operations activities. Like the SAP, the COP will undergo the appropriate NEPA reviews and may require either an EIS or an EA. Like the SAP, the COP must also comply with relevant Federal statutes.

For commercial leases issued for hydrokinetic activities, a COP is not required. However, in order for a lessee to continue to hold a commercial hydrokinetic lease the lessee must submit to FERC a license application at least 6 months before the end of the site assessment term. The license application may be submitted to FERC at the same time the SAP is submitted to MMS.

For limited leases, ROW grants, and RUE grants, a lessee or grantee will be required to submit a GAP, which covers all activities on the lease or the grant including site assessment, construction, operations, and decommissioning. Like the SAP and COP, the GAP will undergo the appropriate NEPA reviews and must comply with relevant Federal statutes.

Revenue Sharing

The new subsection 8(p)(2)(B) of the OCSLA (43 U.S.C. 1337(p)(2)(B)) requires payment to certain coastal States of 27 percent of the revenues received by the Federal Government from any projects that are located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. In addition, when a project extends into this area (3 nautical miles seaward from the coastline of at least one State), subsection 8(p) extends eligibility for a share of the revenues to States with a coastline that is located within 15 miles of the geographic center of the project. The regulation establishes a formula for the equitable distribution of payments to eligible States based on the proximity of each State's coastline to the geographic center of the project.

Operations

The regulations that address operations cover environmental management, safety management, inspections, facility assessments, and decommissioning. The regulations on operations are designed to ensure safety and prevent or minimize the likelihood of harm or damage to the marine and coastal environments. The regulations follow an adaptive management approach. They require the operator to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the operator is required to comply with regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental effects, inspections, facility assessments, and incident reporting.

Alternate Use of Existing Facilities

The final rule establishes general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. These requirements include general provisions that explain how MMS will approve and regulate alternate use activities on the OCS. The MMS will authorize such activities through the issuance of an Alternate Use RUE.

The rule explains how applicants can request Alternate Use RUE's, how MMS will decide whether to issue Alternate Use RUE's, and how Alternate Use RUE's will be competitively issued (if MMS determines that competitive interest exists). The rule also sets forth the requirements for: (1) the terms of such authorizations; (2) payments to MMS; (3) necessary financial assurance; (4) assignments, suspensions, terminations; and (5) decommissioning of approved alternate use structures.

In addition to the provisions in subpart J, the MMS has made associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q to clarify the obligations for decommissioning an oil and gas platform, in the event MMS approves an alternate use of the platform.

2.3 MMS and Federal Energy Regulatory Commission (FERC) MOU

On April 9, 2009, MMS and FERC finalized a Memorandum of Understanding (MOU) that clarifies jurisdictional understandings regarding renewable energy projects on the OCS in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. Specifically, the MOU recognizes that (1) MMS has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic renewable energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

Under this new agreement, those entities interested in operating a hydrokinetic project on the OCS must first obtain a lease from MMS. The MMS will issued a public notice to determine whether competitive interest exists in the area, and will proceed with either the competitive or noncompetitive lease issuance process depending on responses received to this public notice. The MMS will conduct the NEPA analysis necessary for the lease issuance and any site assessment activities that will occur on the lease. After an applicant acquires a lease from MMS, FERC may issue a license or exemption for the hydrokinetic project, and conduct any necessary NEPA analysis. After a license is issued, construction and operations of the project may begin as per the terms of the license. To facilitate efficient processing of the lease and license applications, it may be helpful for potential lessees to apprise both MMS and FERC of their interest in hydrokinetic development at the start of the process.

Further, the MOU states that MMS and FERC will work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects, and coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. The MOU ensures that the interests of both agencies are adequately represented and that the process of developing renewable energy on the OCS happens efficiently, in an environmentally responsible manner, and with appropriate benefit to the people of the United States.

Also, while hydrokinetic projects will entail obligations and responsibilities relating to FERC regulations under licenses and exemptions, the holder of a hydrokinetic lease must comply with all terms and conditions set forth in the MMS- issued lease including MMS' right to access data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor.

2.4 NEPA Documentation

Prior to a proposed lease sale, the MMS will prepare draft environmental documentation that includes, but is not limited to: (1) a description of the proposed lease sale, including the renewable energy resource to be developed and a projection of the site assessment, construction, and generation activities that might occur; (2) reasonable alternatives to the leasing proposal;

(3) a description of the existing environment; (4) a detailed analysis of possible effects on the environment, including socioeconomic and cumulative effects; (5) a description of the assumptions on which the analysis is based; (6) potential mitigation measures; (7) any unavoidable adverse environmental effects; (8) an analysis of the relationship between short-term uses and long-term productivity; (9) an analysis of any irreversible or irretrievable commitment of resources; and (10) the records of consultation and coordination with others in preparation of the document. This document may also describe the technology assumed or deemed necessary for use in site assessment and commercial development and operations in the proposed lease sale area. Pertinent published and unpublished investigations from academic and other institutions and organizations and from other Federal and State agencies are reviewed during the preparation of the NEPA document. When the draft is complete, it is made available for public review. In the case of a draft EIS, the document is filed with the EPA, and a Notice of Availability is published in the Federal Register, providing for a 60-day public comment period.

No earlier than 30 days after publication of a draft EIS, but within the 60-day comment period, one or more public hearings will be held in the vicinity of the proposed lease area for the purpose of receiving comments on the draft EIS. The MMS will announce the time and location in the Federal Register at least 30 days before the public hearings.

The comments and information received through the public hearings and the official review process are analyzed along with any newly acquired information and, when appropriate, are incorporated into the final EIS or EA. After all the comments are reviewed, new stipulations or other measures to protect sensitive areas, or biological or other types of resources, may be included in the proposed lease sale. Under typical circumstances, 3 to 5 months after the public hearing, a final EIS is filed with EPA and made available to the public. A Notice of Availability is published in the Federal Register.

2.5 Part by Part Summary of the Final Rule

The final rule is divided into 10 subparts. Many of the provisions in the subparts set forth administrative procedures. A few of the subparts directly describe provisions that address environmental issues. A brief description of each subpart follows. A complete discussion of each subpart is presented in the preamble of the final rule. Changes between the proposed rule and the final rule that have the potential to affect impacts to the environment are incorporated in the discussion below. The environmental analysis of these provisions is set forth in section 4.1 of this EA. Modifications were made to the Final Rule as a result of the agreement between MMS and FERC. Only those modifications that have potential environmental implications are incorporated in this summary.

Subpart A of the final rule establishes MMS's authority and the purpose for the rule. It also contains provisions that address the general requirements that apply to all renewable energy and alternate use activities, for example, the qualifications for holding leases, ROW grants and RUE grants on the OCS, and the appeals process. The definitions of special terms used in these regulations are also in subpart A. Section 285.103 of the rule contains provisions regarding when MMS may approve departures from the requirements established in the rule. The MMS will consider such departures when it is needed to: (1) facilitate the proper development of a

lease or grant; (2) conserve natural resources; (3) protect life (including human and wildlife), property, or the marine, coastal, or human environment; or (4) protect sites, structures, or objects of historical or archaeological significance. Section 285.105 requires lessees to take measures to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore environment. Section 285.108 requires that, if any action is filed alleging that a lessee or grantee operating under these regulations is insolvent or bankrupt, the lessee or grantee must notify MMS within 3 days of learning of the action. While hydrokinetic projects will entail obligations and responsibilities relating to FERC regulations under licenses and exemptions, the holder of a hydrokinetic lease must comply with all terms and conditions set forth in the MMS- issued lease including MMS' right to access data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor.

Subpart B contains provisions that address the administrative process for obtaining a lease. The rule includes requirements regarding general lease information, the competitive lease process, the competitive lease award process, the noncompetitive lease award process, and commercial and limited lease terms. Section 285.203 requires that before issuing leases, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal Agencies, with the Governor of any affected State, tribal governments, and the executive of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCSLA and by other relevant Federal statutory requirements (e.g., the ESA and the Magnuson-Stevens Fishery Conservation and Management Act). The MMS added a multiple-factor auction format to the rule that may be employed to rank proposals, resulting in a lease award to the bidder making what MMS determines to be the best offer. Single or multiple financial bid variables may be considered (e.g., rental rate, operating fee, variable cash bonus, or a combination of variables). Nonmonetary variables may also be considered such as technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors.

Subpart C sets forth the procedures for the issuance of ROW grants and RUE grants and the financial requirements to qualify to hold such grants.

Subpart D contains provisions that address lease and grant administration matters such as: (1) noncompliance and cessation orders; (2) designation of operator; and (3) lease or grant assignment, suspension, renewal, termination, relinquishment, contraction, and cancellation. The MMS may issue a cessation order during the term of a lease or grant when the lessee or grantee fails to comply with an applicable law, regulation, order, or provision of a lease, grant, plan or other MMS approval. A cessation order will set forth what measures are required, including reports that are required to be prepared and submitted to MMS. Upon receiving a cessation order, the lessee must cease all activities on the lease or grant, as specified in the order. The MMS may, however, authorize certain activities during the period of the cessation order. The MMS reserves the right to suspend operations when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance. With requests to renew a lease or grant, the MMS may approve a renewal request to conduct substantially similar activities that were authorized under the original lease or grant. The MMS will not approve a renewal request that involves

development of renewable energy not originally authorized in the lease or grant. Specific procedures detailing how an entity operating a FERC-licensed hydrokinetic project on an MMS-issued lease may obtain a lease renewal will need to be developed, and will be proposed at a later time. The Secretary may cancel a lease or grant for national security reasons if it was obtained fraudulently, if the lessee or grantee failed to comply with laws and regulations, or if the lease or grant activities cause serious harm or damage to natural resources, life, property, etc.

Subpart E sets forth payment and financial assurance requirements for commercial leases, limited leases, ROW grants, and RUE grants. Subpart E also addresses revenue sharing with the States. Before MMS will issue a commercial lease, limited lease, ROW grant, or RUE grant or approve an assignment of an existing commercial lease, the lessee or grantee must guarantee compliance with all lease or grant terms and conditions by providing either a bond or approved security. The bond ensures that the finances necessary for removing the facility once operations have ceased will be available. Bonding levels are required to increase in proportion to any expansion of activities.

Subpart F sets forth the requirements for plans and information. The provisions in subpart F describe the basic requirements for the SAP, COP, and GAP. An SAP contains the plans for conducting resource data gathering and other activities, such as technology testing, related to a commercial lease, and may also include plans for a project easement. An SAP must include the results and supporting data from surveys, such as physical characterization surveys and baseline surveys. Subpart F has been substantially revised and combines the lease sale and site assessment activities into one review, reducing the number of required NEPA documents. This change is based on comments received on the proposed rule. Upon review of the comments, the MMS determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAP's, COP's, and GAP's may be permitted under the authority of the ACOE. In many instances, these types of activities may be authorized under the ACOE's Nationwide Permit Program. The MMS revised the rule to remove the need for MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Project proponents and lessees may now conduct these surveys pre- or post-lease/grant, authorized by the ACOE under the Nationwide Permit Program or other appropriate approval and applicable Federal law.

The COP describes the construction, operations, and conceptual decommissioning plans under a commercial lease and includes any plans for a project easement. The COP must describe all planned facilities that will be constructed and used for the site-specific project including onshore and support facilities and all anticipated project easements. The COP must also describe all proposed activities, such as proposed construction activities, commercial operations, and conceptual decommissioning plans, for all planned facilities including onshore and support facilities. For hydrokinetic projects, the FERC license application replaces the COP. If your project activities are governed by a FERC license, then the terms of your FERC license and MMS requirements will dictate your decommissioning activities.

A GAP describes the proposed activities for assessing and developing a limited lease or grant including, if applicable, plans for a project easement. Such activities include: (1) physical

characterization surveys (e.g., geological and geophysical surveys or hazards surveys); (2) resource assessment surveys (e.g., meteorological and oceanographic data collection); (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and (4) construction activities and conceptual decommissioning plans for all planned facilities, including onshore and support facilities, that will be constructed and used for a project, including any project easements.

The MMS must approve the SAP, COP, or GAP before activities can begin on a lease or grant. The provisions describe when a NEPA analysis is required and identify the CZMA requirements. A plan will not be approved without an appropriate environmental analysis. The provisions also describe the information that must be submitted to assist MMS in the preparation of a NEPA analysis. Additionally, a provision addresses air quality requirements that must be included in an SAP, COP, or GAP.

Subpart G sets forth the requirements for facility design, fabrication, and installation. Since FERC will regulate construction and operations activity on hydrokinetic commercial leases, this subpart applies only to the renewable energy activities that will be regulated by MMS under approved SAPs, COPs, and GAPs. The reporting requirements for each plan are also described. The subpart addresses the need for and responsibilities of a Certified Verification Agent (CVA). The CVA must: (1) ensure that the facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report; and (2) ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA is directly responsible for immediately providing to MMS reports of all incidents that affect the design, fabrication, and installation of the project and its components.

Subpart H addresses the requirements for environmental and safety management, inspections, and facility assessments. Specific provisions describe how to comply with environmental requirements and how to protect threatened, endangered, and protected species; archaeological resources; and essential fish habitat. For operations, provisions address safety management systems, maintenance and shutdowns, equipment failures and adverse environmental effects, inspections and assessments, and incident reporting and investigations. With regard to hydrokinetic activity regulated under FERC license, MMS will retain a role in inspections under the MOU adopted by FERC and MMS. We may inspect to ensure compliance with any provision of a lease, easement, or right-of-way we issue. The MMS will coordinate such inspections with FERC.

Subpart I sets forth the decommissioning requirements for OCS facilities, including associated cables or pipelines. The provisions require the removal of all facilities at the end of operations. FERC license holders must comply with the decommissioning requirements of their MMS-issued lease. Within 2 years following termination of a lease or grant, the lessee must: (1) remove or decommission all facilities, projects, cables, pipelines, and obstructions; and (2) clear the seafloor of all obstructions created by activities on the lease, including the project easement, or grant, as required by the MMS. Before decommissioning, the lessee must submit a decommissioning application and receive approval from the MMS. The decommissioning application will undergo appropriate environmental reviews. Section 285.906 of the final rule

requires lessees to include in the decommissioning application a description of measures to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore waters. During the decommissioning process, if any archaeological resource is encountered, the lessee must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to MMS and await MMS approval to proceed. After removal of the facility, a decommissioning report must be submitted.

Subpart J addresses the requirements related to RUE's for energy- and marine-related activities using existing OCS facilities. The requirements relate to the types of activities authorized, the granting of an RUE for the activity, the administration of the RUE, and the decommissioning. In subpart J, there are general provisions for authorizing and regulating activities that use (or propose to use) an existing OCS facility for energy- or marine-related purposes which are not otherwise authorized under another part of the OCSLA or any other applicable Federal statute. Activities authorized under any other part of the OCSLA or under any other Federal law that use (or propose to use) an existing OCS facility are not subject to the final rule. The MMS will consider requests for an Alternate Use RUE on a case-by-case basis. In considering such requests, MMS will consult with relevant Federal Agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that: (1) ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; (2) does not inhibit or restrain the orderly development of OCS mineral or energy resources; (3) avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance); (4) is otherwise consistent with subsection 8(p) of the OCSLA; and (5) enables MMS to effectively regulate such activities.

3 ALTERNATIVES TO THE PROPOSED ACTION

For all alternatives discussed below, the activities that would be authorized for renewable energy and alternate use of existing structures are the same as those activities described in the Programmatic EIS, unless otherwise specified. As required by 40 CFR 1508.9(b) and section 102(2)(E) of the NEPA, an EA shall include a brief discussion of alternatives to the proposed action. The following are alternatives to the proposed action.

3.1 Regulatory Program with Area Identification by MMS and Fixed Term for Alternate Use

Under this alternative, MMS would promulgate regulations that would establish a 3-year planning cycle during which limited strategic areas would be selected where commercial leases for renewable energy projects would be offered. This alternative was suggested by the Ocean Renewable Energy Coalition in the comments submitted in response to the Advance Notice of Proposed Rulemaking. Each 3-year cycle would be initiated with the identification of areas to be offered by MMS, followed by competitive leasing and environmental analyses of the site-

specific projects offered, and ending with the issuance of leases. The MMS would identify those areas to be offered for lease rather than rely on industry to identify the areas.

For renewable energy development projects, only areas identified by MMS as having adequate energy resources, appropriate water depth, proximity to a load center, and minimal environmental impact would be offered. The specific localities would be determined in coordination with the affected States and would be subject to adequate interest by industry. Each area identified would be evaluated through the NEPA process, and specific locations within the area could be identified as unacceptable for development. The defined areas available for leasing would then be offered for commercial leasing following the process defined in the regulations. The planning process would also identify reasonable corridors for the transmission cable. The planning process would include the terms and conditions to be incorporated into the leases and RUE's for operation. Leases would be initiated at the end of each 3-year cycle. The operator would be responsible for obtaining all permits and provide a financial guarantee for decommissioning and restoring the site to its original condition, as provided in the proposed rule. Project-specific NEPA documents would still be required.

For demonstration projects, the operator would nominate a site and submit a proposal within the defined area. The MMS would grant a limited lease for a specified period of time based on the proposal, with terms and conditions based on site-specific NEPA analysis. The operator would be responsible for obtaining all permits and provide a financial guarantee for decommissioning and restoring the site to its original condition.

For alternate use activities, a fixed duration (e.g., 5 years) would apply to all Alternative Use RUE's that are issued rather than providing for a case-by-case determination of an appropriate term for each RUE, as set forth in the final rule. The fixed term would allow MMS the option to terminate the RUE should circumstances warrant.

3.2 No Action Alternative

Under the no action alternative, the MMS would not develop regulations to authorize renewable energy and alternate use activities on the OCS through the issuance of a lease, RUE, or ROW. However, the Renewable Energy and Alternate Use Program would continue to operate. The MMS would continue to be able to issue leases and grants for renewable energy and alternate use activities on a case-by-case basis. Issuing leases and grants on a case-by-case basis would result in the same renewable energy and alternate use activities as those of the proposed action. What differs would be the process by which MMS would approve such activities.

3.3 Alternatives Considered but Eliminated from Detailed Analysis

Several alternatives were considered but eliminated from detailed analysis during the preparation of this EA; they are described in the following sections.

3.3.1 Develop limited regulations with comprehensive guidelines

Under this alternative, the MMS would develop a limited regulatory framework and follow up with comprehensive guidelines to operators. This alternative would have minimal administrative rules, applications, and review process requirements. The evaluation of renewable energy or alternate use project proposals by the MMS would be performed pursuant to comprehensive guidelines and informed by best management practices as described in the Record of Decision for the Programmatic EIS. An applicant's request for a lease or grant would include a summary of the proposed activities and satisfactory evidence that the applicant is qualified to hold a lease, easement, or ROW on the OCS. Authorized activities would be determined on the basis of published comprehensive guidelines that would define the conditions of approval for plans of operation. Under this alternative, the MMS would have limited ability to enforce guidelines, and the potential environmental consequences would be greater than the proposed action; therefore, this alternative is not analyzed in detail.

3.3.2 Incorporate regulations for renewable energy and alternate use into existing oil and gas regulations

Under this alternative, new specific regulations for renewable energy and alternate use would be incorporated into existing oil and gas regulations. For example, plan requirements would be incorporated into 30 CFR part 250 subpart B while decommissioning requirements would be incorporated into 30 CFR part 250 subpart Q. Environmental protection requirements would be incorporated into 30 CFR part 250 subpart C. Procedures for issuing a lease, easement, or RUE would be analogous to those used for oil and gas, including a call for nominations, a notice of intent, an areawide lease sale, and regulation of subsequent activities. Transmission lines would be regulated in a similar manner as pipelines. Incorporating regulations for renewable energy and alternate use into the existing oil and gas regulations would require the reissuance of most of MMS's regulations and would increase the risk of confusion in their application due to mixing two very different offshore activities. It would make MMS oversight and enforcement more difficult because the regulations would become more complex. Therefore, this alternative is not analyzed in detail.

3.3.3 Provide regulations that are detailed and prescriptive

Under this alternative, the MMS would issue detailed and prescriptive regulations incorporating precise operating conditions for offshore operators of renewable energy and alternate use projects. The standards would be derived from existing standards used in other countries such as Denmark and Great Britain. The regulations would be technology specific since the technical requirements are different for each technology. The MMS would focus initially on preparing prescriptive regulations for the operation of wind energy activities because there is more information available on wind energy development and operation. The detailed regulations would include engineering specifications and operation requirements as well as construction and decommissioning requirements describing the best practices procedures for facility installation and removal. The engineering designs would be limited to currently operating technologies where details are available. While detailed and prescriptive regulations would enhance clear communication of expectations to industry and be readily enforceable, creation of meaningful requirements at this time would be difficult due to the minimal availability of information regarding the best criteria for the OCS. For wave and ocean current

technologies, the most effective and efficient designs have not yet been identified by industry, thus making any prescriptive criteria very difficult to identify. For these reasons, this alternative is not analyzed in detail.

4 ANALYSIS OF THE PROPOSED ACTION AND ALTERNATIVES

4.1 Analysis of the Proposed Action

The proposed action analyzed in this EA is the promulgation of regulations for the MMS Renewable Energy and Alternate Use Program on the Federal OCS. A detailed description of the proposed action was presented in section 2 of this EA.

The final rule addresses administrative responsibilities of both MMS and the lessee or grantee, which have no direct or indirect environmental impacts. There are no impacts to the environment from the final rule because it sets forth the requirements for administrative functions such as the issuance of leases and the submittal of plans for activities conducted on leases and grants. Many provisions of the final rule are designed to lessen environmental impacts. Provisions within each subpart are discussed here.

- Subpart A contains provisions for approving departures from the regulation's requirements. The MMS will consider a departure when it is needed to: facilitate the proper development of a lease or grant; conserve natural resources; protect life (including human and wildlife), property, or the marine, coastal, or human environment; or protect sites, structures, or objects of historical or archaeological significance. These measures are protective of the environment. Subpart A also requires early notice of a bankruptcy allowing early intervention to ensure that the lessee or grantee does not abandon a facility. The rule was revised to require lessees to take measures to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore environment.
- Subpart B includes consultation provisions to ensure that State, tribal, and local interests are taken into consideration, which are likely to be protective of the environment. A multiple-factor auction format was added that may include consideration of impacts to the environment, such as carbon emissions.
- Subpart C sets forth administrative provisions.
- Subpart D contains provisions that allow MMS to issue cessation orders if the lessee fails to comply with Federal laws and regulations, including environmental laws. The MMS reserves the right to suspend operations when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance. The MMS will not renew a lease for activities not authorized under the original lease, and the Secretary may cancel a lease should activities cause serious harm or damage to natural resources. These

provisions provide MMS the means to be protective of the environment should activities occurring on the lease be determined to cause harm.

- Subpart E contains provisions that require bonding to ensure that a lessee or grantee removes facilities once operations have ceased, thus preventing the abandonment of equipment in the ocean. As a lessee's or grantee's activities increase on a lease, the bonding level is required to increase. This requirement ensures that the lessee or grantee has the financial ability to remove all facilities and equipment including cables or pipelines once a lease or grant has terminated.
- Subpart F contains provisions that require the lessee or grantee to prepare an SAP to evaluate the area where the proposed activities will occur. The MMS will analyze the site assessment activities for their potential environmental impacts and identify appropriate mitigation measures in the lease issuance process. In addition, the SAP will provide data that will be used to identify potential archaeological sites and areas of biological sensitivity that should be avoided during construction or decommissioning. The SAP will ensure protection of the local environment. The lessee or grantee will be required to prepare a COP that will describe in detail the proposed construction and operation activities at the location, except for lessees who are conducting hydrokinetic activities. The MMS will prepare a NEPA analysis based on the information provided by the lessee or operator in the COP to determine the environmental impacts. The MMS will require appropriate mitigation and monitoring on a project-specific basis. The MMS recognizes the need for an analysis at the project level because renewable energy technologies are rapidly evolving, thus making specific requirements for all projects impossible to determine at this point. A GAP will be required for activities associated with limited leases, such as technology testing. The final rule requires that an appropriate environmental review be conducted by MMS prior to approval of the GAP.
- Subpart G contains provisions that set forth the requirements associated with a CVA. The CVA has many responsibilities including ensuring that all facilities are designed according to standards and are built according to the approved plan.
- Subpart H contains provisions that require that facilities be regularly inspected by MMS and that ensure that activities occurring on the lease comply with MMS regulations. Subpart H contains specific provisions related to the protection of threatened, endangered, and protected species and to the protection of essential fish habitat. The subpart also sets forth a process to ensure the protection of archaeological resources. These provisions give MMS the means to enforce measures for the protection of the environment.
- Subpart I contains provisions that address the requirements for decommissioning. The environmental impacts of decommissioning are addressed in the COP, but the regulations require revisiting the decommissioning process at the time when it will occur, which will allow a better assessment of the potential environmental impacts. The rule was revised to require lessees to include in the decommissioning application a description of measures to prevent the unauthorized discharge of pollutants, including marine trash and debris, into the offshore waters.

- Subpart J contains provisions regarding the alternate use of existing facilities. The MMS will consider requests for Alternate Use RUE's on a case-by-case basis. In considering such requests, the MMS will consult with relevant Federal Agencies and evaluate whether the proposed activities involving the use of an existing OCS facility may be conducted in a manner that: (1) ensures safety and minimizes adverse effects to the coastal and marine environments including their physical, atmospheric, and biological components to the extent practicable; (2) does not inhibit or restrain the orderly development of OCS mineral or energy resources; (3) avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance); (4) is otherwise consistent with subsection 8(p) of the OCSLA; and (5) allows the MMS to effectively regulate the activity. A separate NEPA analysis will be required for each project proposed.

There are no direct or indirect impacts to the environment from the final rule because it sets forth the requirements for administrative functions such as the issuance of leases and the submittal of plans for activities conducted on leases and grants. However, while not specifically and directly incorporating detailed provisions that will reduce impacts to the environment, the final rule requires that environmental analyses be prepared for activities that are related to the issuance of a lease, easement, or right-of-way for OCS renewable projects. This requirement will result in an appropriate assessment of the potential impacts as well as the development of effective mitigation and monitoring measures. The final rule also provides for the oversight of activities, such as inspections, that should minimize the environmental impacts.

Cumulative impacts result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. The proposed action is the promulgation of the regulations for the MMS Renewable Energy and Alternate Use Program on the Federal OCS. There are no direct or indirect impacts to the environment from the final rule because it sets forth the requirements for administrative functions such as the issuance of leases and the submittal of plans for activities conducted on leases and grants. Therefore, there are no cumulative impacts from the promulgation of the final rule.

4.2 Regulatory Program with Area Identification by MMS and Fixed Term for Alternate Use

A description of this alternative was given in section 3.1 of this EA. This alternative differs from the proposed action in that the MMS would identify areas for leasing rather than allow industry to identify such areas. Initial NEPA analyses would be used to identify environmentally sensitive sub-areas within the proposed lease area that could be removed from consideration for leasing. The same types of renewable energy projects would be proposed under this alternative as for the proposed action. The areas where these activities are expected to occur in the foreseeable future are off the Atlantic, Pacific and Gulf of Mexico coasts. The process would differ because areas that were environmentally sensitive would not be offered for lease. Consequently, this process would apparently increase the level of environmental protection. However, both the proposed action and this alternative would require subsequent site-specific

NEPA documentation that would essentially result in the same level of protection because areas on the OCS that should be avoided for environmental reasons would ultimately be identified before issuance of a lease. The primary differences between the proposed action and this alternative are when the identification of the areas would take place and who is responsible for making the identification. In the proposed action, the project proponent is responsible for identifying the area for lease at a time of the project proponent's choosing. Under the proposed action, there is the risk that the area chosen by the project proponent may later be determined to be environmentally sensitive, which would preclude development. This alternative, which requires MMS to identify the area and select a time for leasing, may result in delayed development. The MMS would first have to engage in a process to identify suitable areas on the OCS for development before proposals could be considered.

In addition, under this alternative, the regulations for alternate use of existing structures differ from the proposed action because RUE's for alternate uses would have a fixed duration of 5 years rather than a duration determined on a case-by-case basis. Under this alternative, the impacts may be reduced or minimized because the activities would be reevaluated every 5 years. If the reevaluation determines that impacts from the activities on the environment are detrimental, the activities may be suspended until corrected or terminated. Since there are no direct or indirect impacts from this alternative, there are no cumulative impacts.

4.3 No Action Alternative

Under the no action alternative, the MMS would not develop regulations to authorize renewable energy and alternate use activities on the OCS through the issuance of leases or grants. The MMS would continue to be able to issue leases and grants for renewable energy and alternate use activities under the Renewable Energy and Alternate Use Program on a case-by-case basis. The same renewable energy and alternate use activities as those of the proposed action would result with the choice of the no action alternative. What differs would be the process by which MMS would approve such activities. Without the benefit of regulations, renewable energy and alternate use projects may be subject to delays in approvals. Approvals of project proposals could potentially vary among MMS regional offices and could be processed at a slower pace due to less certainty in the absence of clear, consistent formal regulations. Also, project proposals approved on a case-by-case basis would not benefit from the systematic environmental considerations that are embedded in the final rule. The environmental impacts of the no action alternative are described under the analysis of the case-by-case alternative in the Programmatic EIS.

5 CONSULTATION AND COORDINATION

The scoping process for this EA was formally initiated on February 26, 2008, with a Federal Register Notice announcing the preparation of an EA. In the Notice, the MMS requested that interested parties submit comments regarding any information or issues that should be addressed in the EA. The comment period for the scoping process closed on March 26, 2008. Two comment letters were received, one from Food & Water Watch and one from the Hydropower

Reform Coalition. The comment from Food & Water Watch offered new information about salmon farming and the potential impacts to wild salmon. Salmon farming, at this time, is not expected on the OCS. The MMS received many comments on the Programmatic EIS about the MMS's authority to authorize offshore aquaculture. As stated in the Programmatic EIS, the MMS has no active role and is not seeking a primary role in authorizing aquaculture activities. However, under the MMS's new "alternate use" authority provided under section 388 of EPAct (codified as subsection 8(p) of the OCSLA), the MMS may consider proposals to conduct aquaculture activities that involve the use of existing OCS oil and gas facilities. The final rule emphasizes the need for coordination and consultation with NOAA and other relevant Federal Agencies. The MMS would engage in such coordination and consultation before considering any alternate use proposal involving aquaculture. The MMS is also aware of efforts that would make NOAA the lead Agency for offshore aquaculture. In any event, the MMS would work closely with NOAA on any proposal that involved the use of existing OCS structures for aquaculture.

Comments and questions from the Hydropower Reform Coalition were specific to the rule and procedures within the rule. Where appropriate, those comments were taken into consideration during the preparation of the EA. The MMS also responds to comments from the Hydropower Reform Coalition more directly in the response to comments section in the proposed rule.

The MMS published the proposed rule and draft EA on July 9, 2008. Comments were received on both the draft rule and draft EA until September 8, 2008. Only comments that specifically addressed the draft EA are responded to here below.

Comments were received on the draft EA from the following: Alliance to Protect Nantucket Sound, Clean Ocean Action, Environmental Defense Center and Heal the Bay, Food & Water Watch, National Park Service, Natural Resources Defense Council, and U.S. Fish and Wildlife Service.

Comment Summary: The EA is not legally sufficient. The EA tiers from the Programmatic EIS which is also not legally sufficient. The EA contains little new analysis or additional detail. The Programmatic EIS did not satisfy NEPA because the discussions of impacts are too general; therefore, the conclusion that impacts are minimal is not justified. The MMS should issue a Supplemental EIS rather than an EA because aquaculture was not adequately assessed.

Response: The EA incorporates by reference the analyses discussed in the Programmatic EIS and therefore, does not tier from the EIS. The Programmatic EIS was prepared by MMS to inform the Agency about the potential environmental impacts that could result from activities that may occur on the OCS as a result of the establishment of the Renewable Energy and Alternate Use Program. The proposed action analyzed in the EA is the promulgation of the rule, which is procedural and does not specifically authorize any activity. The Programmatic EIS clearly states that its evaluation focuses on new technologies that will be deployed in frontier areas and, therefore, more detailed, site-specific analyses must be conducted in the future for any activities prior to deployment. As part of such site-specific NEPA analyses, detailed cumulative impact evaluations will be made. The rule also addresses the process for allowing alternate use

of existing structures and does not focus on any specific activity such as aquaculture. Since the range of potential activities is very broad, the MMS will conduct site-specific analyses of the proposed alternate use when additional information is available and the development of mitigating measures can be most effective. The MMS believes that developing prescriptive rules for a single activity at this time is premature.

Comment Summary: The MMS received numerous comments regarding cumulative impacts. One criticism focused on the “industry-driven site selection process” as making it more difficult to conduct a cumulative impact analysis. Further, it was stated that, as more renewable energy projects are developed on the OCS, the cumulative effects of those projects may compound individual effects and put an additional strain on the ecology of the marine environment. Also, the cumulative impact analysis is not sufficient. In addition, the claim that “cumulative impacts are the same or similar” is speculative.

Response: The MMS shares the concerns of the commenters regarding cumulative effects. We will work closely with Federal Agencies, affected States, local governments, and other stakeholders to coordinate and consult on activities proposed under this program and to identify critical issues including their cumulative effects. Cumulative effects will be assessed at each stage of environmental review of projects, including lease sales, in order to identify such effects and to recommend appropriate mitigation measures and monitoring. Cumulative analyses must include all reasonably foreseeable activities, including other energy projects as well as any activities that could impact the area under consideration (i.e., commercial fishing, vessel traffic, military uses, etc.). Area-specific or project-specific NEPA analyses will be prepared in a timeframe more closely matched to when the actual activity would occur. This would allow for a more informed cumulative analysis incorporating other planned activities within the locality of the proposed action.

Comment Summary: The MMS should identify areas for development and areas that should not be developed using spatial planning or some other criteria for defining highly sensitive ecosystems rather than relying on industry to identify areas of interest. Such designations (zoning) would have to take into account the renewable resource potential, sensitive areas, as well as present and potential future space/use conflicts. The alternative proposed in the EA should be adopted allowing for a planning cycle, pre-selected sensitive “No-Go” areas, and informed cumulative impacts. The argument that identification of areas for protection would delay development is unacceptable because it puts rapid development before environmental protection. Allowing industry to take the lead would affect the quality of data collected because there are no prescribed data collection standards. The MMS could use information collected in Europe as a starting point.

Response: Section 388 of EPO Act explicitly states that “This subsection does not apply to any area on the outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.” In addition to excluding these areas, the Record of Decision for the Programmatic EIS describes policies and best management practices that inform stakeholders about protective measure such as avoidance of areas of biological concern (e.g., coral reefs), archaeological features, and other areas that could pose conflicts (e.g., shipping fairways). These

policies and practices help identify where development may not occur. The regulatory framework takes into account the importance of State and local government involvement with the MMS to help identify and addresses issues associated with renewable energy program activities. The MMS will decide where to proceed with development based on comprehensive analysis of relevant issues and information, which would include industry interest as expressed by potential lessees. The MMS may take a national, regional, or more localized approach to the leasing analysis and decision process as the Renewable Energy and Alternate Use Program develops. The alternative described in the EA does not provide for flexibility in the leasing process. Past experience from the oil and gas leasing program suggests that government resources are best expended on areas where industry has expressed interest.

Comment Summary: The MMS should consider within a NEPA analysis protecting National Park Service viewsheds, as well as other nationally significant areas. Impacts associated with the construction and operation of onshore facilities such as pipelines, distribution stations, etc., should also be analyzed.

Response: While the Programmatic EIS addressed these issues in a general manner, site-specific NEPA documents will address these issues when more specifics about the size and location of a proposed project are known.

Comment Summary: The EA suggests that liability for decommissioning may be shed by oil and gas companies once a platform is designated for an alternate use.

Response: Under provisions in the final rule, the MMS may allow structures to remain on the OCS after cessation of oil and gas production provided there is an acceptable alternate use. When the alternate use ceases, these structures must be completely removed unless allowed to be toppled in place as part of the rigs-to-reef program. The MMS's approval of an alternate use does not allow existing lessees to avoid accrued decommissioning responsibilities.

Comment Summary: The MMS has inadequately assessed the impacts of alternate use, in particular, the use of facilities for Liquefied Natural Gas (LNG) and aquaculture. The MMS should perform a separate EIS for marine aquaculture.

Response: The LNG facilities on the OCS are authorized by the USCG, and any proposal for the use of an existing structure for storage and transport of LNG would undergo a NEPA review led by the USCG. Under section 388 of EPA Act, the MMS has authority to issue leases for alternate uses of existing OCS facilities. This authority allows MMS to consider proposals to conduct aquaculture activities that involve the use of existing OCS oil and gas facilities. The final rule provides that MMS will coordinate and consult with NOAA and other relevant Federal Agencies before the MMS would consider approving any alternate use proposal involving aquaculture.

Comment Summary: To limit risks associated with managing offshore aquaculture, the MMS should adopt the alternative proposed in the EA, which would limit Alternate Use RUE terms to 5 years.

Response: Subpart J of the rule, which addresses the alternate use of existing structures, was developed to be broad and flexible because of the wide array of potential alternate use activities. While limiting the term to 5 years may be appropriate for some activities, it may not be appropriate for others. The MMS chose not to be overly prescriptive in the rule by allowing for term limits and other mitigating measures to be applied on a case-by-case basis.

Comment Summary: The NEPA analyses that will be conducted for lease sales and plans are not clearly communicated. The MMS is not committed to conducting subsequent analyses.

Response: Further description of the NEPA process, as it is envisioned to apply to the Renewable Energy and Alternate Use Program, is presented in section 2.3 of the EA. The MMS is committed to conducting the appropriate NEPA analysis for all activities that may occur on the OCS. Because the types of activities are far ranging in size and complexity, the extent of analysis must be decided on a case-by-case basis.

Comment Summary: The EA is deficient because it does not describe how the rule will apply to the Cape Wind Associates project.

Response: The final rule and associated EA address a national program, not specific projects. The Cape Wind Associates proposed project has undergone extensive NEPA review and, if approved, will be subject to all applicable regulations.

6 REFERENCES

U.S. Department of the Interior, Minerals Management Service. 2007. Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007. OCS EIS/EA MMS 2007-046.

U.S. Department of the Interior, Minerals Management Service. 2008. Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf: Proposed Rule, Draft Environmental Assessment, June 2008. OCS EIS/EA MMS 2008-032.



The Department of the Interior Mission

As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historical places; and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The Department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.



The Minerals Management Service Mission

As a bureau of the Department of the Interior, the Minerals Management Service's (MMS) primary responsibilities are to manage the mineral resources located on the Nation's Outer Continental Shelf (OCS), collect revenue from the Federal OCS and onshore Federal and Indian lands, and distribute those revenues.

Moreover, in working to meet its responsibilities, the **Offshore Minerals Management Program** administers the OCS competitive leasing program and oversees the safe and environmentally sound exploration and production of our Nation's offshore natural gas, oil and other mineral resources. The MMS **Minerals Revenue Management** meets its responsibilities by ensuring the efficient, timely and accurate collection and disbursement of revenue from mineral leasing and production due to Indian tribes and allottees, States and the U.S. Treasury.

The MMS strives to fulfill its responsibilities through the general guiding principles of: (1) being responsive to the public's concerns and interests by maintaining a dialogue with all potentially affected parties and (2) carrying out its programs with an emphasis on working to enhance the quality of life for all Americans by lending MMS assistance and expertise to economic development and environmental protection.