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MMS Workshop on OCS Renewable Energy Regulatory Framework

-*Mission statement* – MMS manages the ocean energy and mineral resources on the OCS and federal and Indian mineral revenues to enhance public and trust benefits, promote responsible use, and realize fair value.

-EPA Act of 2005 gave the secretary of the Interior authority to grant a lease, easement or right of way for activities on the OCS that produced or support production, transportation, or transmission of energy from sources other than oil or gas.

-This called for the promulgation of any necessary regulations to carry out this new authority. The Secretary delegated responsibility for OCS renewable energy activities to MMS.

Regulatory Framework:

- coordination with the federal, state and local tasks forces
- leasing grant issuance concerning competitive and non-competitive leasing, commercial and limited leasing
- plans and operations concerning site assessment, construction and operations, and general activities plan (GAP)
- environmental and safety monitoring and inspections
- payments
 - bonding, payments, and revenue sharing
- decommissioning

Workshop Schedule:

- June 4 – Washington, DC
- June 8 - Norfolk, VA
- June 9 – Boston, MA
- June 9 – New Orleans, LA
- June 10 – New York City, NY
- June 10 – Fort Lauderdale, FL
- June 11 – Monmouth, NJ
- June 11 – Savannah, GA
- June 24 – Seattle, WA
- June 25 – Portland Oregon
- June 26 – San Francisco, CA

Major Changes from Proposed Rule:

- FERC – revisions throughout the rule to reflect FERC responsibilities for licensing hydrokinetic energy activities on the OCS
- Alternate use – added an explicit statement that MMS will not consider applications for aquaculture
- Competition
 - o Augmented qualification requirements to discourage nuisance indications of competitive interest (S. 285.106)
 - o Added new sections for switching from competitive to non-competitive process if competitors drop out (S. 285.212)
 - o Added multiple factor auction format (S. 285.220)
- Confidential Business Information
 - o Will be withheld from disclosure under exemption 4 of FOIA and provided timeframes for releasing such information (S. 285.113)
- Geological and Geophysical Surveys
 - o Clarified such surveys will be permitted by the U.S. Army Corps of engineers (subpart F)
- NEPA Analysis
 - o Clarified explanation of NEPA review with combined and streamlined process (e.g., combined SAP/COP submission/review) (subpart F)
- Timing of Operation Fee
 - o Changed start up to the date that generation of electricity begins (S.285.503)
- Operating Fee Formula
 - o Replaced retail price with wholesale price (S.285.506)
- Financial Assurance
 - o Separated financial assurance from decommission costs (S. 285.516)
 - o Added several financial assurance options other than surety bonds (S.285.525 – 528)
- Decommissioning
 - o Increase decommissioning time from 1 year to 2 years (S.285.902)
- Sale of Power from Limited Leases
 - o Revised definition of limited lease to allow minimal sales to offset site assessment and technology testing expenses (S.285.112)
- Federal Agency Lessees
 - o Added federal agencies as entities that may hold OCS renewable energy leases and grants (S.285.106)
- Research Activities
 - o Expanded research provision to include states and other federal agencies in addition to DOE (S.285.238)
- Renewals
 - o Provided for longer term of renewal if negotiated by applicable parties (S.285.427)
 - o Provided that lease or grant will remain in effect while MMS considers renewal application (S.285.427, 432)
 - o Added criteria for considering renewals (S.285.429)

Two Types of Leases:

- Commercial Leases – for full development and power generation
- Limited Leases – for resource assessment and technology testing
- Both leases include a project easement for necessary cables or pipelines*

Two Types of Processes:

- Competitive and non competitive processes will:
 - Comply with federal statutes (e.g. NEPA, CZMA, ESA, CAA, MSA, MBTA)
 - Seek input from affect states, localities, and stakeholders

Section 388: Competition

- Secretary shall issue a lease, easement, or right of way on a competitive basis unless the secretary determines after public notice of a proposed lease, easement, or right of way that there is no competitive interests

Competitive Process:

- Call for information* – requests information about interests, issues, and concerns associated with specified areas
- Area identification* – describes the specific area, any alternatives to proposed action, mitigation measures, and issue to be analyzed and considered for leasing
- Lease sale compliance documents* – such as an EIS, consistency determination, and other consultation documents (e.g. ESA) are prepared by MMS
- Proposed notice* – describes proposed bidding systems, fiscal terms, lease terms and conditions, mitigation, and award criteria
- Final notice* – describes sale procedures and rationale for the final fiscal terms, lease terms and conditions, mitigation, and award criteria
- Award lease*

Competitive Lease Terms:

- Commercial leases** – for full development and power generation
 - 6 month preliminary term
 - Within 6 months, the lessee must submit site assessment plan (SAP) describing planned site characterization activities and including relevant site survey results
 - MMS conducts required environmental compliance (e.g. NEPA, MSA, ESA) and technical reviews
 - Applicant pays for NEPA compliance documents
 - MMS may approve, approve with conditions, or disapprove SAP
 - 5 year site assessment term
 - Within 5 years of SAP approval, the lessee must submit construction and operations plan (COP) describing all activities and facilities to be installed

and used to gather, transport, transmit, generated, or distribute energy from the lease

-25 year operations term

-Require two reports before constructing and installing facilities under an approved COP:

-Facility Design Report – details of the design of facilities including cables and pipelines, described in approved plans

-Fabrication & Installation Report – details of the how facilities will be built in accordance with plans and FDR

-Limited leases – for resource assessment and technology testing

-6 month preliminary term

-Within 6 months, the lessee must submit site assessment plan (SAP) describing planned site characterization activities and including relevant site survey results

-MMS conducts required environmental compliance (e.g. NEPA, MSA, ESA) and technical reviews

-Applicant pays for NEPA compliance documents

-MMS may approve, approve with conditions, or disapprove SAP

-5 year operations term

Non-competitive Process:

-receive request – for lease or grant

-issue public notice – describing proposal and requesting information to determine whether competitive interest exists

-continue with non competitive process – if NO competitive interest exists

Non-Competitive Commercial Lease Process:

-Applicant submits SAP

-Applicant pays for NEPA compliance

-MMS conducts required environmental compliance (e.g. NEPA, MSA, ESA) and technical reviews

-MMS determines the lease terms and conditions and consideration of environmental, socioeconomic, and market factors

-Lease issuance is deferred until SAP is approved or approved with conditions

-Within 5 years of SAP approval, the lessee must submit COP

Non-competitive Limited Lease:

-Applicant submits GAP

-Applicant pays for NEPA compliance

-MMS conducts required environmental compliance (e.g. NEPA, MSA, ESA) and technical reviews

-MMS determines the lease terms and conditions in consideration of environmental, socioeconomic, and market factors

-Lease issuance is deferred until GAP is approved or approved with conditions

Non-Competitive Lease Terms

- Commercial leases – for full development and power generation
 - 5 year site assessment term
 - 25 years operations term
 - Limited Leases – for resource assessment and technology testing
 - 5 year operations term
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Other Types of Instruments:

- Right of Use and Easement (RUE) requires a GAP
 - Right of Way (ROW) requires a GAP
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Renewable Energy ROW:

- ROW – authorizes the installation on the OCS of cables, pipelines and associated facilities that involve the transportation or transmission of electricity or other energy product from any renewable energy source NOT associated with a single OCS renewable energy lease (not a project easement)
- Example: A transmission cable on the OCS that runs parallel to shore in support of multiple offshore projects

Renewable Energy RUE:

- RUE – authorizes installations on the OCS that support the production, transportation or transmission of electricity or other energy product from any renewable energy resource NOT associated with a single OCS renewable energy lease
 - Example: A service facility supporting multiple offshore renewable energy projects
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Compliance with Plans:

- Lessee or grantee must comply with all terms and conditions of the MMS-approved plans
 - MMS will identify terms and/or conditions requiring certification of compliance
 - Lessee/grantee reports compliance and identifies any measures/monitoring that were not effective and recommends new measures/monitoring
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Lease and Grant Administration:

- Suspensions, assignments, cancellations, terminations, renewals etc:
 - MMS may order or approve suspensions
 - Rights may be assigned in whole or in part
 - Secretary may cancel lease or grant
 - Leases may be renewed for the same activities
 - MMS may issue noncompliance notices and cessation order for failure to comply with lease or grant regulatory requirements

Inspections:

- MMS will conduct scheduled and unscheduled inspections to:
 - Verify that activities are conducted as provided under OSCLA, regulations, lease or grant, and MMS-approved plans
 - Determine that proper safety equipment has been installed and is operating properly provided under MMS-approved plans
 - Lessee/grantee must develop an annual self inspection plan
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Decommissioning:

- Decommissioning concept described in the MMS-approved plans is not an approval of actual decommissioning activities
 - A decommissioning application must be submitted to MMS for approval no later than 2 years before planned removal activities begin (or immediately with cancellation, relinquishment, or other early termination)
 - The application must describe:
 - facilities, lines, and structures to be removed
 - schedule
 - removal methods and plan for site clearance
 - Information for NEPA and other Federal requirement compliance
 - MMS discretion to allow structures to remain in place for alternate uses
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Financial Assurance:

- Commercial Leases
 - require a lease-specific \$100,000 bond before lease issuance
 - may require additional bond before SAP approval
 - require COP bond based on project complexity, project payments, and decommissioning costs before COP approval
 - Limited Leases, ROWs, RUEs
 - require a \$300,000 lease or grant-specific bond
 - may increase based on projected payments, and abandonment and cleanup costs
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Payments:

- Bonus Bids
 - minimum bid established in Final Sale Notice for leases or Auction Notice for grants
- Acquisition Fees
 - \$0.25/acre for leases issued noncompetitively
 - none for grants
- Rentals
 - \$3.00/acre/year for leases

- Greater \$5.00/acre/year or \$450/year for project easements, ROWs and RUEs (ROWs also cost \$70 per nautical mile)
- Operating Fees: Formula for commercial Leases

P (Local wholesale power price MW-hour as set by EIA)

X

H (8,760 hours per year)

X

C (Capacity factor – decimal)

X

R (Fee rate)

X

M (installed capacity in units of production)

-Operating Fee Commercial Leases

-Example: 150 megawatt (MW) facility with an anticipated capacity factor of 0.35, operating in a region with an average wholesale power price of \$65 per MW-hr and a fee rate of 2%

-Example: $(\$65/\text{MW-hr})(8760 \text{ hrs/yr})(0.35)(0.02)(150 \text{ MW}) = \0.6 million/yr

Revenue Sharing:

-EPAct requires payment to eligible States 27 percent of the revenues from any project located wholly or partially within the area extending between 3 and 6 miles from the shore

-Equitable distribution of shared revenue among coastal states that are within 15 miles of geographic center of the project

Program Start-Up on June 29, 2009:

-MMS Priorities

-New Jersey – State goals to construct wind facilities on the OCS by 2012; developer selected

-Delaware – State supported OCS wind initiative; developer has PPA with utility calling for construction to begin in 2012

-Rhode Island – State goals to construct wind facilities on the OCS by 2013;
developer selected
-Other

Questions and Answers:

Maureen Bornholdt – (renewable energy program manager)

Q.) “How does MMS propose to coordinate the lease process with FERC? In specifically if a wave developer has a license for a FERC process located in state waters and wants to expand the project to OCS, does the wave developer have some ability to have priority to adjacent OCS lands – or could MMS lease that site to anyone even if there is a FERC license for the project on adjacent state waters”

A.) “We’re going through discussions right now but to answer your question directly it depends on how it goes through the competitive process”

Q.) “Who will perform the NEPA analysis?”

A.) “FERC will perform the NEPA analysis with the MMS as the lead role and FERC as the coordinating role. But the NEPA licensing process is still to be determined...”

Q.) “If companies wanted to tie projects together concerning rights of ways, will this be tied to their leases?”

A.) “No, it will not be tied to the leases.”

Q.) “What constitutes an exemption from the hydrokinetic process from FERC?”

A.) “Still to be analyzed...”

Q.) “Where do the first priorities with States lie in this program?”

A.) “Delaware, NJ, and Rhode Island are where our main priorities lie. MMS Doesn’t want to move ahead unless they are sure the States are set in terms of storing their equipment.”

Q.) (Thomas Graves – Energy Attorney) “Does this program apply to the Great Lakes or other major bodies of water in the US looking into renewable energy.”

A.) The MMS and FERC have no authority in dealing with interstate bodies of water, parks, or fish sanctuaries.”

Q.) (Tim King) “What stage do you bring in the public for a hearing? When does EIS come in?”

A.) “It’s up to state and federal task forces to get the word out. We will take advantage of assisting agencies and of course local newspapers.”

Q.) “How does the State and Federal Government split up revenue?”

A.) “27% of revenue goes to the state, and rest goes to the Federal Government. This was decided by congress in the energy policy act of 2005”

Q.) “Why have you chosen the Atlantic coast?”

A.) “It’s not to say that we won’t respond to other states, but States like Delaware and New Jersey have gone out there with goals that we are looking to help them fulfill.”