

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives@anl.gov; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80071
Date: Monday, May 21, 2007 9:34:16 AM
Attachments: [sign_on_letter_for_MMS_AEAU_PEIS_final_submitted_80071.pdf](#)

Food & Water Watch ◊ Sierra Club ◊ Downeast Salmon Federation ◊
 The Center For Food Safety ◊ Louisiana Shrimp Association ◊ Environment Matters ◊
 Environment Florida ◊ National Coalition for Marine Conservation ◊
 Institute for Fisheries Resources ◊ Planning and Conservation League ◊
 Ocean Conservation Research ◊ Go Wild Campaign ◊ Ocean Conservancy ◊ Clean Catch ◊
 Downeast Lobstermen's Association ◊ Greenpeace USA ◊ Alaska Marine Conservation Council ◊
 Mangrove Action Project ◊ Pacific Coast Federation of Fisherman's Associations ◊
 Environmental Defense Center ◊ Alaska Center for the Environment ◊ Gulf Restoration Network ◊
 Alaska Independent Fishermen's Marketing Association ◊ Pacific Marine Conservation Council ◊
 Puget Sound Harvesters Association ◊ United Commercial Fishermen's Association

Thank you for your comment, Zach Corrigan.

The comment tracking number that has been assigned to your comment is 80071. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 09:35:29AM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
 Draft Comment: 80071

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 Middle Initial: B
 Last Name: Corrigan
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 Privacy Preference: Don't withhold name or address from public record
 Attachment: /Users/d11/Desktop/sign on letter for MMS AEAU PEIS final submitted.pdf

Comment Submitted:
 Attached please find a letter from 26 consumer, conservation, and fishing organizations urging the Minerals Management Service to drop its apparent plans to allow fish farming in federal waters and apparent plans to permit energy companies to abandon their old, unused platforms.

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate

Use Programmatic EIS Webmaster at (630)252-6182.

MMS Alternative Energy and Alternate Use Programmatic EIS
 Argonne National Laboratory
 EVS/900
 9700 S. Cass Avenue
 Argonne, IL 60439

**Re: Draft Programmatic Environmental Impact Statement for
 Proposed Alternative Energy and Alternate Use Program, 72 Fed. Reg. 13307-13308
 (March 21, 2007)**

Submitted via email on May 21, 2007

Dear Mr. Chris Oynes:

We, the undersigned consumer, conservation, and fishing organizations, submit this letter to urge the Minerals Management Service to drop its apparent plans to allow fish farming in federal waters and apparent plans to permit energy companies to abandon their old, unused platforms.

MMS's draft programmatic environmental impact statement (PEIS) suggests that the agency plans to permit and regulate fish farming – also known as aquaculture – that uses offshore energy platforms. We are very concerned about offshore aquaculture, which involves raising finfish, such as cod, halibut, and red snapper, in often large, crowded cages where fish waste and chemicals flush straight into the open ocean. Increased forage-fish use for aquaculture fishmeal could have wide-ranging environmental and socioeconomic impacts, reducing the amount of fish available for larger fish, marine mammals, and seabirds. Up to six pounds of wild fish can be ground up to feed one pound of farmed fish. Further, fish farms can introduce escaped non-native fish species that compete with and spread disease to wild fish populations. Damage to the farms from storms is one way that farm raised fish can escape. For example, in the late nineties, storms destroyed an offshore aquaculture test cage placed adjacent to an energy platform in the Gulf of Mexico.

We hope that the agency is not using this rulemaking to bypass Congress as it considers the merits of offshore aquaculture legislation. The 2005 Energy Act only gives MMS the authority over "authorized" marine-related uses. Congress has not specifically authorized offshore aquaculture and has yet to consider a current offshore aquaculture bill. Because marine aquaculture could significantly harm the environment, human health, and the economies of local fishing communities, and because the large amount of resources and specific regulatory expertise that would be needed to adequately address these problems, we believe MMS should prohibit energy platform use by commercial offshore aquaculture facilities.

We are also concerned that MMS's PEIS states that it considers an "artificial reef" an alternate use of platforms subject to its jurisdiction, thus suggesting it intends to create a federal abandonment program. This would be a radical change from current law, which requires energy platforms to be removed, or "decommissioned," after they stop producing oil and gas except when they become part of a state's "rigs to reef" program. We are concerned about the long-term contaminating effects the rigs may have on the marine environment, including as a result of storms. There is also little evidence that the platforms, acting as "artificial reefs," actually result in larger, healthier fish populations. Finally, recent reports have shown a connection between oil and gas rigs and elevated mercury levels in surrounding sediments and fish. We oppose any plans to allow energy companies to avoid paying the costs of removing their rigs, estimated to be \$9.9 billion from 1985-2020, when nothing in the 2005 Energy Act gives MMS such new authority.

80071-002

David Harsila
Alaska Independent Fishermen's Marketing
Association

Peter Huhtala
Pacific Marine Conservation Council

Peter Knutson
Puget Sound Harvesters Association

George Barisich
United Commercial Fishermen's Association

For these reasons, we urge MMS to drop these apparent plans and reissue its PEIS.

Sincerely,

Wenonah Hauter
Food & Water Watch

Vivian Newman
Sierra Club

Wayne Shaw
Downeast Salmon Federation

George A. Kimbrell
The Center For Food Safety

Margaret Curole
Louisiana Shrimp Association

Marianne Cufone
Environment Matters

Mark Ferrulo
Environment Florida

Pam Lyons Gromen
National Coalition for Marine Conservation

Mitchell Shapson
Institute for Fisheries Resources

Gary A. Patton,
Planning and Conservation League

Michael Stocker
Ocean Conservation Research

Anne Mosness
Go Wild Campaign

Tim Eichenberg
Ocean Conservancy

Niaz Dorry
Clean Catch

Sheila Dassatt
Downeast Lobstermen's Association

John Hovecar
Greenpeace USA

Paula Terrell
Alaska Marine Conservation Council

Alfredo Quarto
Mangrove Action Project

William "Zeke" Grader
Pacific Coast Federation of Fisherman's
Associations

Linda Krop
Environmental Defense Center

Butch Allen
Alaska Center for the Environment

Cynthia Sarthou
Gulf Restoration Network

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80072
Date: Monday, May 21, 2007 11:48:25 AM
Attachments: MMS-LincolnCounty-Comments_80072.pdf

Thank you for your comment, Rob Bovett.

The comment tracking number that has been assigned to your comment is 80072. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 11:49:44AM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80072

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Privacy Preference: Don't withhold name or address from public record
Attachment: C:\Documents and Settings\Rob Bovett\My Documents\MMS-LincolnCounty-Comments.pdf

Comment Submitted:
See attached.

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

UNITED STATES OF AMERICA
Before the
MINERALS MANAGEMENT SERVICE
of the
DEPARTMENT OF THE INTERIOR

Notice of Availability (NOA) of the)
Draft Programmatic Environmental) FR Doc E7-5158
Impact Statement (EIS) and)
Public Hearings regarding)
Alternate Energy and Alternate Use Program)
on the Outer Continental Shelf (OCS))

COMMENTS OF LINCOLN COUNTY, OREGON

The following comments of Lincoln County, Oregon, are in response to the Minerals Management Service's (MMS) *Notice of Availability (NOA) of the Draft Programmatic Environmental Impact Statement (EIS) and Public Hearings* (hereinafter "NOA" and "Draft PEIS"),¹

Although the NOA deals with many new and emerging energy technologies, Lincoln County will focus primarily on ocean wave energy, as this is the technology being developed along the Lincoln County coast.²

¹ Published in the Federal Register on March 21, 2007, thus resulting in a NOA response deadline of May 21, 2007. 72 Fed Reg 13307.

² See Potential Alternative Energy Technologies on the Outer Continental Shelf, Argonne National Laboratory, ANL/EVS/TM/06-5 (2006) for a comprehensive review of the various new and emerging technologies. See also Technology White Paper on Wave Energy Potential on the U.S. Outer Continental Shelf, MMS (2006); White Paper Submitted to the Western Governors Association Clean and Diversified Energy Advisory Committee: Ocean Wave Energy Conversion Technology, EPRI (2005); and Ocean Wave Energy, a 21st Century ocean of opportunity for environmental conservation and baseload renewable energy caught in a 20th Century legal framework, Lincoln County (PowerPoint presentation before the Oregon Joint Ocean Policy Committee) (2007), <http://www.co.lincoln.or.us/counsel/OWEL/20070403-PowerPoint-handout.pdf>.

Introduction: Lincoln County and Ocean Wave Energy

Ocean wave energy is an exciting and developing renewable energy technology. Unlike intermittent wind power, ocean wave power is baseload, which means we don't have to back it up with fossil fuels. Ocean wave energy also has the potential for significant economic development. As it turns out, the Oregon Coast is one of the World's best locations for development of ocean wave energy.³

Lincoln County is located on the Central Oregon Coast, and offers additional advantages for the development of ocean wave energy: (1) Lincoln County is home to the Port of Newport, whose extensive fishing fleet has the capacity to service ocean wave energy conversion devices; (2) Lincoln County is home of the Hatfield Marine Science Center of the Oregon State University, a leader in developing this new technology; and (3) Lincoln County is the home of the Central Lincoln People's Utility District, a consumer-owned electric utility that has taken an active leadership role in encouraging the development of ocean wave energy.

However, as noted in the Draft PEIS, the development of ocean wave energy has the potential to seriously damage fisheries. Commercial and recreational fishing are critically important to Lincoln County's economy (over \$100 million annual industry for Lincoln County).

However, Lincoln County does not oppose the development of ocean wave energy. Just the opposite: Lincoln County believes that renewable fisheries and renewable ocean wave energy can coexist and be mutually supportive, if ocean wave energy is developed in a responsible and careful manner and the interests of our local fisheries and other users are recognized and protected.

³ See Sea Power, OSU engineers are working with coastal communities to tap offshore energy, Oregon State University (2006), http://oregonstate.edu/terms/2006spring/includes/2006spring_seapower.pdf, see also Survey and Characterization of Potential Offshore Wave Energy Sites in Oregon, EPRI Report E21 EPRI WP-OR-003 (2004).

Comment 1: Caution Due to Lack of Adequate Data

As mentioned during the MMS Public Hearing in Portland, Oregon, on May 2, 2007, Lincoln County applauds the excellent work by MMS and Argonne National Laboratory on the comprehensive and thorough Draft PEIS, as well as the excellent supporting website.

However, as noted in the Draft PEIS itself, the huge hole in the Draft PEIS is a lack of adequate data to assess potential environmental and other impacts. This is due to the very nature of these new and emerging technologies, as well as a general lack of detailed outer continental shelf (OCS) mapping data. With this being the practical reality, Lincoln County strongly urges MMS to adopt rules and policies that develop these technologies in a thoughtful and careful manner.

Comment 2: Resolve Jurisdictional Conflict (MMS and FERC)

As already recognized by MMS, the Federal Energy Regulatory Commission (FERC) has asserted jurisdiction over ocean wave energy devices pursuant to Part I of the Federal Power Act, including areas within the OCS.⁴ However, MMS has also asserted that same jurisdiction (at least as to the OCS), thus resulting in a conflict between FERC and MMS.⁵ Lincoln County believes FERC to be in error as a matter of law.⁶

⁴ See *AquaEnergy*, 102 FERC ¶61,242 (2003).

⁵ See, e.g., Protest of the United States Minerals Management Service filed in *Ocean Wave Energy Partners*, FERC Docket P-12750 (February 16, 2007). Lincoln County also strongly supports the substantive contents of that filing, in which MMS methodically pointed out the many serious deficiencies of utilizing Part I of the Federal Power Act to site ocean wave energy devices.

⁶ As noted above, FERC's assertion of jurisdiction stems from its decision in *AquaEnergy*, 102 FERC ¶61,242 (2003). That case began when AquaEnergy filed a declaration regarding a proposed ocean wave energy project in Makah Bay, Washington (Makah Bay is on the Pacific Ocean at the Northern tip of the Olympic Peninsula). The National Oceanic & Atmospheric Administration (NOAA) of the United States Department of Commerce filed a motion to intervene on behalf of the National Marine Sanctuary Program (NMSP) and the National Marine Fisheries Service (NMFS). NOAA expressed concern about the proposed project under numerous federal acts, including the National Marine Sanctuaries Act and the Magnuson-Stevens Fishery Conservation Act. NOAA also indicated that "the proposed project is to be located within navigable waters and will be connected to the interstate grid which is part of, and in interstate commerce" and therefore "FERC has proper jurisdiction over the proposed project and

80072-003 (contd.)

Lincoln County has taken affirmative steps to resolve the jurisdictional conflict between FERC and MMS, including asking members of Congress to pass legislation that clarifies jurisdiction over ocean wave energy.⁷

In the meantime, Lincoln County has urged FERC, and likewise urges MMS, to adopt rules, policies, and intergovernmental agreements between FERC and MMS, and other federal, state, and local regulatory agencies, in a manner that renders the jurisdictional conflict moot. This would serve two purposes. First, it would ensure that if a federal court were to hold that FERC does not have jurisdiction, the progress made in reliance upon that jurisdiction would not fall like a house of cards. This will provide the industry with the stability necessary to effectively develop this emerging technology. Second, it would facilitate intergovernmental cooperation to streamline regulatory processes.

Comment 3: Utilize Local Facilitation of Siting Decisions

As noted previously and in the Draft PEIS, the development of ocean wave energy has the potential to seriously damage fisheries.⁸ However, if ocean wave energy is developed in a responsible and careful manner, those conflicts can be avoided or mitigated.

should exercise that jurisdiction.” FERC’s Director of Energy Projects agreed and issued an abbreviated order finding that the proposed project would be located in “a navigable waterway as defined by Section 3(8) of the Federal Power Act,” thus providing FERC with jurisdiction. *AquaEnergy*, 101 FERC ¶ 62,009. In response, AquaEnergy filed an extensive request for rehearing in support of its position that the FERC’s Federal Power Act jurisdiction does not extend to ocean wave energy. In its ruling on the matter, FERC noted that AquaEnergy had failed to provide legislative history to support its position that territorial waters off the United States coast were not navigable waters for purposes of Part I of the Federal Power Act. *AquaEnergy*, 102 FERC ¶ 61,242 (2003), at 5 ¶ 12 and note 5. FERC concluded otherwise, and also concluded that an ocean wave energy conversion device is a “power house” for purposes of the Act. Lincoln County believes FERC to be in error on both counts: (1) The legislative history that AquaEnergy did not provide would have informed FERC that the precise purpose of the language relied upon for navigable water jurisdiction was added for the express limited intent of including shoals within that definition (see Kerwin, *Federal Water-Power Legislation (1926)*, pages 203-204, 252-3, 256, 259); and (2) a “power house” is a term that refers to a specific component of a traditional hydroelectric project (see www.ferc.gov/students/whatisferc/history.htm, referring to en.wikipedia.org/wiki/Hydroelectric, which contains an illustrative graphic demonstrating this point).

⁷ This request has been made directly to members of Congress, as well as through the Oregon Legislature. See House Joint Memorial 22-A, which unanimously passed both the Oregon Senate and Oregon House of Representatives, and is now enrolled, <http://www.leg.state.or.us/07reg/measpdf/hjm1.dir/hjm0022.en.pdf>.

What is needed is close consultation with local resources that can help facilitate siting in areas that maximize efficiencies and minimize damage to fisheries. This close consultation should occur *before* a site is identified in a permit application.⁹

Lincoln County and its partners have taken a leadership role in this area by forming an ocean wave energy team, with representatives from all key stake-holders. In addition, Lincoln County has also created a Fishermen Involved in Natural Energy (FINE) Committee, empowered to assist with the siting of ocean wave energy devices.¹⁰ Lincoln County is also undertaking actions with the Oregon Sea Grant / Port Liaison Project program to further involve all local stakeholders in the siting process through public forums in Lincoln County.

This teamwork has recently resulted in the approval of three sites for the placement of demonstration projects this Summer.¹¹ “Testing of these devices is likely the best way to fully evaluate potential impacts.”¹²

⁸ See also *Assessing the Costs and Benefits of Electricity Generation Using Alternative Energy Resources on the Outer Continental Shelf*, OCS Study MMS 2007-013 (2007), page 35: “The placement of offshore energy facilities may compete with regional fishing operations, potentially negatively affecting the local economy.”

⁹ Lincoln County strongly supports the Comments of the United States Department of the Interior filed in FERC rulemaking proceeding RM07-8-000. Those comments included the following statement, among others: “Given the potential for dramatic large scale impacts to fish and wildlife resources by these projects, we believe that early consultation and encouragement to begin studies sooner would provide up-front opportunities to ensure potential developers have information on affected resources and potential project effects before they file an application.”

¹⁰ Lincoln County Ordinance # 446, <http://www.co.lincoln.or.us/counsel/OWEL/LCO446.pdf>.

¹¹ The demonstration projects are not in the OCS, and will not involve interconnection to the grid for the sale of power, so a license was not sought from FERC. See *Verdant Power*, 112 FERC ¶ 61,143 (2005). Lincoln County has also been promoting Oregon House Bill 2925 to exempt small demonstration projects from the requirement to obtain a full hydroelectric power plant license from the state (a permit from the Department of State Lands would still be required). The bill unanimously passed both the Oregon Senate and Oregon House of Representatives, and is now enrolled, <http://www.leg.state.or.us/07reg/measpdf/hb2900.dir/hb2925.en.pdf>.

¹² Comments of the United States Department of the Interior in FERC rulemaking proceeding RM07-8-000, page 3 (April 27, 2007).

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Lincoln County strongly urges MMS to adopt rules that require ocean wave energy permit applicants, **before** applying for a permit, to utilize available local processes designed to assist in the siting of ocean wave energy conversion devices in a manner that maximizes efficiencies and minimizes potential collateral damage.



80072-003 (cont.)

Comment 4: Require Removal of Abandoned Facilities

Abandoned ocean wave energy facilities should be promptly removed.¹³ Lincoln County is successfully promoting state legislation to ensure that abandoned ocean wave energy facilities are removed from the territorial sea. Lincoln County likewise strongly encourages MMS to adopt similar standards for the OCS.¹⁴

¹³ "Demonstration projects that occur during the period of preliminary permit should be fully removed and sites restored if the project is not licensed within a fixed period of time." Comments of the United States Department of the Interior in FERC rulemaking proceeding RM07-8-000, page 3 (April 27, 2007).

¹⁴ Oregon Senate Bill 875-A unanimously passed the Oregon Senate on April 26 (30 yes). www.leg.state.or.us/07rcq/incaspdf/sb0890.dir/sb0875.a.pdf. The bill was heard again in the Oregon Joint Ocean Policy Committee last week, where it received clarifying amendments and received a unanimous "do pass" recommendation. The legislation not only addresses removal of abandoned facilities, but also clarifies that ocean wave energy is a renewable energy for purposes of Oregon's renewable energy tax incentive statutes.

Conclusion

Lincoln County applauds work of MMS and Argonne in developing the Draft PEIS, and urges MMS to:

- (1) Adopt rules and policies that develop these technologies in a thoughtful and careful manner, in light of the lack of adequate data to assess potential environmental and other impacts.
- (2) Adopt rules, policies, and intergovernmental agreements with FERC and other federal, state, and local regulatory agencies in a manner that renders the jurisdictional conflict between FERC and MMS moot.
- (3) Adopt rules that require ocean wave energy permit applicants, **before** applying for a permit, to utilize available local processes designed to assist in the siting of ocean wave energy conversion devices in a manner that maximizes efficiencies, recognizes other ocean users, and minimizes potential collateral damage.
- (4) Adopt rules that ensure the removal of abandoned ocean wave energy devices.

Respectfully dated and submitted electronically this 21st day of May, 2007.

Rob Bovett

Rob Bovett, OSB 91026
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80072-004



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80073
Date: Monday, May 21, 2007 12:34:17 PM
Attachments: EPA_Comment_Letter_80073.pdf

Thank you for your comment, Anne Miller.

The comment tracking number that has been assigned to your comment is 80073. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 12:35:28PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80073

First Name: Anne
Middle Initial: N
Last Name: Miller
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Address: Office of Federal Activities
Address 2: 1200 Penn. Ave., NW
City: Washington
State: DC
Zip: 20460
Country: USA
Privacy Preference: Don't withhold name or address from public record
Attachment: F:\WP\MMS\Alternate_energy\EPA Comment Letter.pdf

Comment Submitted:
Letter Attached

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

James F. Bennett
Branch of Environmental Assessment
Minerals Management Service
381 Elden Street
Herndon, Virginia 20170-4817

Dear Mr. Bennett:

The Environmental Protection Agency (EPA), in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, has reviewed the Minerals Management Service's (MMS) Draft programmatic Environmental Impact Statement (EIS) for Alternative Energy Development and Production and Alternative Use of Facilities on the Outer Continental Shelf (CEQ # 20070089).

In general, this draft EIS provides much of the programmatic level information necessary to assess the environmental impacts associated with implementing an alternative energy and alternate use program and associated regulations. It is clear that, as MMS implements this program and assesses future site specific proposals, there is a continuing need to require the development of adequate environmental baseline information from which to measure the environmental impacts of the proposed project and alternatives. The development of adequate mitigation and monitoring plans should also be based on the characterization of baseline conditions and analysis of project impacts.

The EIS discusses the potential for impacts to marine organisms and marine, coastal and inland birds from operation of wind energy projects. The wind energy site characterization section of the executive summary (ES-5) focuses on the characterization of wind resources and the ocean substrate to "ensure that turbines can be properly located." We recommend that the site characterization efforts also include work to adequately characterize baseline organisms ranging from marine mammals to avian species that may use the project area.

The EIS (page 5-52, third paragraph) indicates that it "is not possible to estimate the collision rate for offshore wind turbines, as this would depend on the specific location of the facilities and the marine and coastal birds that occur in or migrate through the

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surrounding areas." Text later in the same paragraph indicates that impacts to species would range from negligible to moderate depending on the species involved and numbers affected. In our view, the wide range of potential for impacts to avian species described in the EIS speaks to the need for a requirement for adequate site-specific baseline characterizations as part of the alternatives analysis and siting process.

EPA has no objection to the proposed action. However, we note that some of the text in Section 4 does not properly discuss the requirements of the Clean Water Act. Accordingly, the enclosure contains specific clarification language that more accurately describes various Clean Water Act requirements

Thank you for the opportunity to review the draft EIS. If you have any questions regarding our comments, please contact me at 202-564-5400 or contact Ken Mittelholtz at 202-564-7156.

Sincerely,



Anne Norton Miller
Director
Office of Federal Activities

Enclosure

80073-002
(cont.)

80072-003

EPA
Specific Clarification Language
Relating to the Clean Water Act

Section 4.2.6.2 Waste Management

First sentence of 2nd paragraph should read: There are ~~31~~ 36 final ~~and 3 interim~~ dredged material disposal sites designated on the Atlantic OCS (40 CFR ~~228.14 and~~ 228.15).
{NOTE: interim sites can't be used so reference has been deleted here}

Starting with the 5th sentence, the 6th paragraph should read: ~~Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited unless the marine sanitation device has been certified by the USCG; fecal coliform bacterial count in the discharge is less than 1,000/100 milliliters (mL); and there are no visible floating solids (40 CFR 140).~~ Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. ~~Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.~~ Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA

80073-003
(cont.)

Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, the following States in the Atlantic region have designated all or certain segments of their surface waters as no-discharge zones: Rhode Island, Connecticut, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, South Carolina, and Virginia.

Section 4.3.6.2 Waste Management

First sentence of 2nd paragraph should read: There are ~~27~~ 28 final ~~and 11 interim~~ dredged material disposal sites designated on the Gulf of Mexico OCS (40 CFR ~~228.14 and~~ 228.15). **{NOTE: interim sites can't be used so reference has been deleted here}**

Starting with the 5th sentence, the 6th paragraph should read: **~~Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited, unless the marine sanitation device has been certified by the USCG; the fecal coliform bacterial count in the discharge is less than 1,000/100 mL; and there are no visible floating solids (40 CFR 140).~~** Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. **~~Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.~~** Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, in the Gulf of Mexico region, Florida, and Texas have designated all or certain segments of their surface waters as no-discharge zones.

80073-003
(cont.)

Section 4.4.6.2 Waste Management

First sentence of 2nd paragraph should read: There are ~~15~~ 22 final ~~and 11 interim~~ dredged material disposal sites designated on the Pacific OCS (40 CFR ~~228.14 and~~ 228.15). **{NOTE: interim sites can't be used so reference has been deleted here}**

Starting with the 5th sentence, the 6th paragraph should read: **~~Under Section 312 of the Clean Water Act (CWA), the discharge of sewage into coastal waters from any vessel with an installed marine sanitation device is prohibited unless the marine sanitation device has been certified by the USCG; fecal coliform bacterial count in the discharge is less than 1,000/100 mL; and there are no visible floating solids (40 CFR 140).~~** Clean Water Act Section 312 requires the use of marine sanitation devices (MSDs), on-board equipment for treating and discharging or storing sewage, on all commercial and recreational vessels that are equipped with installed toilets. There are three types of MSDs. For Type I MSDs (vessels equal to or less than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 1000 per 100 milliliters and have no visible floating solids. For Type II MSDs (vessels greater than 65 feet) the effluent produced must not have a fecal coliform bacteria count greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage. They are commonly called holding tanks because the sewage flushed from the marine head is deposited into a tank containing deodorizers and other chemicals. The contents of the holding tank are stored until it can be properly disposed of at a shore-side pumpout facility. Section 312 does not apply to vessels with portable toilets ("porta-potties") nor any other on-board portable sewage reception system; gray water from bath or kitchen sinks; nor does it apply to vessels beyond the 3 nautical mile limit of U.S. Territorial waters. **~~Section 312 of the CWA allows States to designate all or portions of their waters as a no-discharge zone into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited.~~** Section 312 also allows EPA or States to establish no-discharge zones in which the discharge of sewage from all vessels into specified waters is prohibited. There are 3 objectives for this designation. Under CWA Section 312 (f)(3), a State may designate portions of their waters as no-discharge zones if the State determines that the protection and enhancement of the quality of the waters require greater environmental protection than current Federal standards allow. In this instance, EPA is required to determine if there are adequate pumpout facilities available. Additionally, a State may make a written application to the Administrator under CWA Sections 312 (f)(4)(A) or 312 (f)(4)(B), for the issuance of a regulation completely prohibiting discharges from a vessel of any sewage, whether treated or not, into specified waters that have environmental importance or waters that serve as drinking water intakes, respectively. The application requirements may vary depending on whether it's an application under CWA Sections 312 (f)(3), 312 (f)(4)(A), or 312 (f)(4)(B). Currently, California is the only State in the Pacific region that has designated segments of its surface waters as a no-discharge zones.

80073-003
(cont.)

Section 7.5.1.2 Non-Oil-and-Gas Activities

Fourth Paragraph should read:

~~**Dredging. The Ocean Dumping Banning Act of 1988 prohibits the dumping of any municipal or industrial waste into the open ocean, so dredging is the only form (albeit indirect) of ocean dumping of these waste types. Dredging is routinely done for a variety of reasons (e.g., channel construction and maintenance, pipeline placement, creation of harbor and docking areas).**~~ Virtually all material ocean dumped in the United States today is dredged material (sediments) removed from the bottom of waterbodies in order to maintain navigation channels and berthing areas. Other materials that are currently ocean dumped include fish wastes, human remains, and vessels. Certain materials, such as high-level radioactive waste, medical waste, sewage sludge, and industrial waste, may not be dumped in the ocean. ~~**Offshore disposal of dredge spoils is authorized**~~ Ocean dumping of dredged material is regulated under Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 USC 1401 et seq) ~~**and the Federal Water Pollution Control Act, as amended (33 USC 1251). The USEPA has designated specific offshore sites in each of the USEPA Regions where this type of disposal can occur. There are regulated dredge disposal areas in Atlantic, GOM and Pacific regions; most of these are in State waters. For example, a large site in the Atlantic region is the Dam Neck site, which is located off of coastal Virginia and is 8 nautical mi² in size. Another is the New York Bight Dredged Material Disposal Site, which receives an average of 3.4 million m³ (4.5 million yd³) of dredge material each year (USEPA 2006e). There are 35 operational ocean disposal sites in the GOM, mostly in State waters, and in the Pacific region there are 31 ocean disposal sites; combined, these sites receive millions of cubic meters of dredge material annually (USDOI/MMS 2006).**~~ Most of the dredged material dumped in the ocean is disposed at ocean dumping sites specifically designated by EPA for dredged material disposal under Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA). The Army Corps of Engineers is required to use such sites for ocean disposal to the extent feasible. EPA's ocean dumping regulations at 40 C.F.R. Part 228 provide the criteria and procedures for the designation and management of ocean disposal sites, and list the currently designated sites by EPA region. There are 36 dredged material disposal sites designated in the Atlantic region, 28 in the Gulf of Mexico region, and 22 in the Pacific region.

80073-004

Other Clarification Recommendations

There are a few other changes that we believe should be made throughout the document. These include:

1. In general, where the document refers to "permitted discharges", reference should be made to the permitting authority.
2. NPDES permits are NOT given for survey vessels, but can be issued for discharges from platform facilities.
3. Where the language refers to survey vessels, it would be better to delete the word "permitted" altogether.

80073-005

As an example of an occurrence where these changes should be implemented, refer to **Section 5.3.9.2 Site Characterization**. The last few sentences of the first paragraph should read ~~"**Permitted** Discharges from survey vessels would be released into the open ocean where they would be rapidly diluted and dispersed, or collected and taken to shore for treatment and disposal. Sanitary and domestic wastes would be processed through on-site waste treatment facilities before being discharged overboard. Deck drainage would also be processed prior to discharge. Thus, impacts to marine and coastal birds from **permitted** waste discharges from survey vessels are expected to be negligible."~~

80073-005
(cont.)

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80074
Date: Monday, May 21, 2007 1:23:06 PM
Attachments: PG&E's_Comments_on_MMS_DPEIS_05-21-07_80074.pdf

Thank you for your comment, Annette Faraglia.

The comment tracking number that has been assigned to your comment is 80074. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 01:24:16PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80074

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Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

UNITED STATES OF AMERICA
BEFORE THE
U. S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Programmatic Environmental Impact Statement For)
Alternative Energy Development and Production and) OCS EIS/EA
Alternate Use of Facilities on the Outer Continental Shelf) MMS 2007-010
)

COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY
ON DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT
FOR ALTERNATIVE ENERGY DEVELOPMENT AND PRODUCTION
AND ALTERNATIVE USE OF FACILITIES
ON THE OUTER CONTINENTAL SHELF

INTRODUCTION

The Minerals Management Service ("MMS") of the U.S. Department of the Interior ("DOI") issued in March 2007 a Draft Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternative Use of Facilities on the Outer Continental Shelf ("DPEIS").¹ The DPEIS addresses potential environmental and other impacts of proposals to generate electricity with emerging technologies that harness the renewable energy potential of the Outer Continental Shelf ("OCS"), including the production of energy from waves and ocean currents.

Pacific Gas and Electric Company ("PG&E") is committed to the study and development of renewable energy sources to provide its customers reliable, economic power with minimal environmental impacts. PG&E, whose service area extends for hundreds of miles along the

¹ OCS EIS/EA MMS 2007-010.

California coast, is actively investigating the feasibility of offshore wave energy conversion devices.² PG&E therefore especially appreciates this opportunity to submit comments on MMS' DPEIS, which constitutes a vital step toward unlocking the vast potential of the OCS to provide the Nation with important sources of domestic renewable energy. In light of PG&E's current initiatives, the comments submitted herein focus on the DPEIS' analysis of wave and ocean current energy capture technologies.

BACKGROUND

A. Statutory Provisions

Section 388 of the Energy Policy Act of 2005 (Public Law 109-58) ("EPAAct") added to Section 8 of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. 1337, a new subsection (p) authorizing DOI to grant (in consultation with other federal agencies) leases, easements, or rights-of-way on the OCS for the production, transportation, and transmission of energy from sources other than oil and gas ("alternative energy sources").

Section 8(p) does not apply to any area on the OCS that is within the external boundaries of any unit of the National Park System, National Wildlife System, or National Marine Sanctuary System, or any National Monument.

Renewable leases must be approved on a competitive basis, unless after public notice of a proposed lease there is no competitive interest. Lessees shall furnish a surety bond or other form of security, and provide for restoration of the lease site. Lessees shall make payments to the

² In February 2007, PG&E filed with the Federal Energy Regulatory Commission two preliminary permit applications to study the feasibility of wave energy conversion devices that would float on the surface of the open ocean in water depths ranging between 60 and 600 feet. The proposed 40-megawatt PG&E Humboldt WaveConnect Project No. 12779 would be located off the coast of the City of Eureka and the Samoa Peninsula in Humboldt County, California, between 2 and 10 miles from shore. The proposed 40-megawatt PG&E Mendocino WaveConnect Project No. 12781 would be located off the coast of Mendocino County, California, between 0.5 and 4.5 miles from shore. The permit applications define a study area of roughly 8 miles by 17 miles (136 square miles) and 4 miles by 17 miles (68 square miles), respectively, but the final projects will have much smaller footprints.

United States pursuant to a program to be established by the Secretary of DOI.³ The new law also directs the DOI Secretary, in cooperation with the Secretary of Commerce, the Commandant of the Coast Guard, and the Secretary of Defense, to establish an inter-agency comprehensive digital mapping initiative for the OCS to assist in decision-making relating to the siting of alternative energy projects.

DOI has designated its MMS to implement the provisions of new OCSLA Section 8(p), and MMS is drafting regulations for this purpose.

B. Geographic Scope of the DPEIS

The OCS begins three to nine nautical miles off the coastal shorelines and extends to about 200 nautical miles from shore. Between the shore and the OCS are state-owned submerged lands, over which MMS has no jurisdiction.

Like wave and ocean current technologies, tidal energy project designs are the subject of considerable interest and investment. However, because tidal energy projects will be deployed close to shore, where they will be subject to state and not MMS jurisdiction, the DPEIS does not analyze this type of technology.

The wave project technologies that are expected to be available in the next six or seven years will likely be deployed where water depth is 100 meters or less.⁴ Ocean current technology is being designed for water depths of 500 meters or less. The DPEIS therefore addresses areas within these parameters.

³ Twenty-seven percent (27%) of such payments shall be allocated among states with coastlines located within 15 miles of the geographic center of the project.

⁴ MMS identifies four types of wave energy technologies: terminators, attenuators, point absorbers, and overtopping devices. While they differ in design, they all use wave action to drive hydraulic pumps or other energy converters.

The DPEIS considers the potential degree of impacts -- negligible, minor, moderate, or major⁵ -- of the entire life cycle of wave and ocean current facilities on 24 environmental, socioeconomic, and other resources. The DPEIS indicates that, with proper siting, wave energy and ocean current projects are expected to have negligible or minor impacts on most of the resources studied, with the potential for moderate impacts on marine mammals, marine and coastal birds, terrestrial biota, sea turtles, coastal habitats, visual resources, and hazardous materials and waste management. These are the resource impacts that can be expected to require more studies and mitigation efforts by potential developers.

DISCUSSION

PG&E strongly supports the DPEIS' proposed action,⁶ which is for MMS to develop an OCS program and issue regulations governing activities associated with granting a lease, easement, or right-of-way ("lease") for the production of renewable energy on the OCS.

The most significant element of MMS' proposed action is the promulgation of regulations containing consistent stipulations for data collection, facility siting, mitigation, and ongoing-impact evaluation. PG&E believes that such regulations should be highly beneficial, since they should serve both to provide first-level avoidance or mitigation of environmental impacts and to apprise potential developers of sites already found unacceptable and the requirements for obtaining a lease. While MMS would still require project-specific information

⁵ Negligible impacts are not measurable. Minor impacts could be avoided with proper mitigation, or the affected resource would recover completely if the impacting agent were eliminated. Moderate impacts are unavoidable and may be irreversible, but the viability of the affected resource is not threatened; or proper mitigation would allow complete recovery of a resource. Major impacts are unavoidable, would threaten a resource's viability, and even proper mitigation would not bring complete recovery.

⁶ The DPEIS considered and rejected the alternatives of case-by-case permitting (*i.e.*, no program and no regulations) and no action (*i.e.*, MMS would not authorize renewable energy projects on the OCS).

gathering and NEPA documents, the programmatic analyses already undertaken would not have to be repeated.

With respect to the DPEIS' analyses of the potential environmental impacts of wave and ocean current energy capture technologies, PG&E believes that the DPEIS provides a very good starting point for a comprehensive treatment of these issues. PG&E also believes that the DPEIS' method for characterizing the potential degree of impacts on various resources generally appears reasonable and sound. The method should produce an environmental review document that is comprehensive, accurate and of high value to developers, regulators and the public. It will be critically important for MMS to have, at the conclusion of its EIS process, a programmatic document that is carefully reviewed with an eye towards maximizing its accuracy⁷, usefulness and value.

The EIS process being undertaken by MMS will provide potential developers with valuable information with respect to their wave and ocean current energy project siting decisions. So too, the regulations MMS is drafting will provide developers with some certainty with respect to the lease approval process. Additional determinants of project feasibility will be known when, pursuant to OCSLA Section 8(p), the DOI Secretary defines the rules for "issuance, transfer, renewal, suspension, and cancellation" of leases, easements, and rights-of-way and establishes a program of "royalties, fees, rentals, bonuses, or other payments" to the United States. Given the nascent and pre-commercial state of this industry, PG&E urges the Secretary to consider ways to encourage these early off-shore technologies when it establishes leasing and payment provisions. DOI can revisit these subjects once the technologies are mature and commercially viable.

⁷ The DPEIS states, for example, at page 5-151, "The facility would require 2,500 mooring lines and anchors." This seems high, and a more reasonable statement might be "2-4 mooring lines per unit".

80074-002
(cont.)

80074-003

80074-004

80074-001

80074-002

Finally, potential developers of wave and ocean-current facilities on the OCS need regulatory certainty as to the respective roles of MMS and the Federal Energy Regulatory Commission ("FERC"). PG&E is aware that MMS has questioned FERC's assertion of jurisdiction over the licensing of hydropower and hydrokinetic projects on the OCS. PG&E also understands that MMS and FERC are working collaboratively on a memorandum of understanding that would coordinate the agencies' activities on behalf of a clear and timely regulatory path for prospective developers of wave and ocean-current facilities such as PG&E.

The agencies' task is daunting, as they come to the table with very different statutory frameworks. A critical example is that, whenever possible, MMS is directed to issue leases on a competitive basis, but the Federal Power Act ("FPA") mandates that FERC grant a hydropower license to the applicant of a project proposal that meets the FPA criteria. FERC must also select among competing license applicants by determining which applicant's plan is best suited to the comprehensive development of a waterway in the public interest. PG&E supports the use of the FPA public interest standard to govern the selection of a licensee for wave or ocean-current facilities on the OCS. However, this leaves the issue of how to comply with the competitive bidding process for leases. It may be that despite the agencies' best efforts, clarification of roles and responsibilities will have to await further Congressional action.

CONCLUSION

PG&E appreciates the opportunity to provide comments to MMS on its EIS process and the DPEIS, a document that will help significantly advance the knowledge level of potential developers, resource agencies, other stakeholders, and the general public about the complex marine environment off our Nation's coastlines. MMS' efforts will help promote the public interest in the commercial deployment offshore of renewable, domestic energy projects in an

environmentally sensitive manner. If it would be helpful to MMS and to the advancement of collective knowledge of OCS renewable energy development, PG&E would be pleased to provide further review and input to this EIS process.

Dated: May 21, 2007

Respectfully submitted,

PACIFIC GAS AND ELECTRIC COMPANY

ANNETTE FARAGLIA
MATTHEW A. FOGELSON

By: 
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80074-005

From: ocsenergywebmaster@anl.gov
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Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80075
Date: Monday, May 21, 2007 1:37:33 PM

Thank you for your comment, Joseph Cox.

The comment tracking number that has been assigned to your comment is 80075. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 01:38:52PM CDT

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Comment Submitted:

Thanks for the chance to comment on your draft Programmatic Environmental Impact Statement regarding the MMS plans to allow energy companies to abandon and then allow the oil rigs to be converted to industrial fish farms. This is a misguided interpretation of the Energy Act of 2005, and would allow the oil corporations to escape billions of dollars in clean-up costs. It also does not address the ecological, economic and human-health oriented issues concerning fish farms anchored off oil rigs. I respectfully request that you reconsider these factors carefully and do not exceed the authority granted to the MMS under the Energy Act of 2005.

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate

80075-001

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; [ocsenergywebmaster@anl.gov;](mailto:ocsenergywebmaster@anl.gov)
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80076
Date: Monday, May 21, 2007 1:55:20 PM
Attachments: No_oil_rigs_into_fish_farms!_80076.rtf

Thank you for your comment, Heather Whitehead.

The comment tracking number that has been assigned to your comment is 80076. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 01:56:27PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80076

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Attachment: C:\Documents and Settings\heather\Desktop\No oil rigs into fish farms!.rtf

Comment Submitted:

Dear Minerals Management Service:

Please find attached a petition from the Center for Food Safety, including signatures from 172 Florida residents who are very concerned about how you are developing your Alternative Energy and Alternate Use program. First, your Programmatic Environmental Impact Statement (PEIS) is incomplete and does not allow for the public to fully understand your intentions for the AEAU program. This is one of the main purposes for a PEIS. Because the PEIS is unclear, it is possible that the new AEAU program will allow the transfer of old oil rigs to other uses, like fish farming. We find this especially troubling since our U.S. Congress has refused to develop an open ocean fish farming program in recent years through a national bill.

80076-001

MMS should not use a "back door way" to be the agency to create and regulate offshore aquaculture.

Open ocean aquaculture has many problems associated with it: spread of diseases and pollution, habitat damage, unsafe human conditions and irreversible changes to fish and other wildlife. Florida residents are coastal people known for our commercial and recreational fisheries including shrimp, crab, lobster snapper, grouper and many more. Tourism, based on our environment, is a key economic factor and so many of us live here to enjoy the benefits of a coastal lifestyle: relaxing on white sand beaches, swimming in clear blue waters, boating and countless water sports. Any potential damage to our waters directly hurts our lifestyle and livelihoods, and so open water fish farming on oil rigs is particularly disturbing.

Finally, during the violent storms in the Gulf of Mexico in recent years, oil rigs were destroyed, some even being carried miles to shore. Had offshore aquaculture existed on these rigs at the time of the storms, there would have been massive releases of captive fish, feed and other pollutants directly into ocean waters. Oil rigs are erected for a purposes and when that purpose is completed, they should be removed as originally contemplated, not transitioned into other uses that might cause serious long term negative consequences.

The Center for Food Safety (CFS) is a non-profit public interest and environmental advocacy membership organization with over 50,000 members across the country. CFS has offices in Washington, DC and San Francisco, CA.

We appreciate your attention to the concerns of our Florida members.

The Center for Food Safety
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Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

80076-001
 (cont.)

Oil Rigs into Florida Fish Farms?

Dear Minerals Management Service:

I am a citizen of Florida and am very concerned about how you are developing your Alternative Energy and Alternate Use program. First, your Programmatic Environmental Impact Statement (PEIS) is incomplete and does not allow for the public to fully understand your intentions for the AEAU program. This is one of the main purposes for a PEIS. Because the PEIS is unclear, it is possible that the new AEAU program will allow the transfer of old oil rigs to other uses, like fish farming. I find this especially troubling since our U.S. Congress has refused to develop an open ocean fish farming program in recent years through a national bill. MMS should not use a "back door way" to be the agency to create and regulate offshore aquaculture.

Open ocean aquaculture has many problems associated with it: spread of diseases and pollution, habitat damage, unsafe human conditions and irreversible changes to fish and other wildlife. We here in Florida are coastal people known for our commercial and recreational fisheries including shrimp, crab, lobster snapper, grouper and many more. Tourism, based on our environment, is a key economic factor and so many of us live here to enjoy the benefits of a coastal lifestyle: relaxing on white sand beaches, swimming in clear blue waters, boating and countless water sports. Any potential damage to our waters directly hurts our lifestyle and livelihoods, and so open water fish farming on oil rigs is particularly disturbing.

Finally, during the violent storms in the Gulf of Mexico in recent years, oil rigs were destroyed, some even being carried miles to shore. Had offshore aquaculture existed on these rigs at the time of the storms, there would have been massive releases of captive fish, feed and other pollutants directly into ocean waters. Oil rigs are erected for a purposes and when that purpose is completed, they should be removed as originally contemplated, not transitioned into other uses that might cause serious long term negative consequences.

Signed

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Oil Rigs into Florida Fish Farms?

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 2007-05-11 Vivian Romgh 18 Audusson Ave, Pensacola, FL 32507
 2007-05-11 Linda Rosenberg 1225 Liguian Rd, Palm Beach Gardens, FL 33410
 2007-05-11 Tracey Schmandt 1501 sw 50 ave, Ft. Lauderdale, FL 33317
 2007-05-11 Larry Schoonover 1715 S. Hubert Avenue, Tampa, FL 33629
 2007-05-11 Hal STEPHAN 5051 Mink Rd., Sarasota, FL 34235
 2007-05-11 Bernie Stevens
 2007-05-11 Daniel Williams 201 SW Mildred Court, Lake City, FL 32024
 2007-05-11 Kathleen Wishart 125 Jefferson Ave #131, Miami Beach, FL 33139
 2007-05-10 Rachel Anderson 5827 Wiltshire st., Jacksonville, FL 32211
 2007-05-10 Angela Anger 308-A Lakeshore Blvd., Kissimmee, FL 34741
 2007-05-10 Mercy Annastia 8560 Cutler Court, Miami, FL 33189
 2007-05-10 Michelle Baker 4720 South Ocean Blvd., Highland Beach, FL 33487
 2007-05-10 Al Buono 1080 SW 92nd Ave, Plantation, FL 33324
 2007-05-10 Monica Burke 1007 E. Jean St., Tampa, FL 33604
 2007-05-10 Barbara Cabrera 3572 N Strump Dr., Beverly Hills, FL 34465
 2007-05-10 Tere Campos 5771 S.W. 50 Ter. 5771 S.W. 50 Ter., Miami, FL 33155
 2007-05-10 David Caperton 460 19th St. SE, Winter Haven, FL 33884
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 2007-05-10 Carol Dodge 8581 E. Sweetwater Dr., Inverness, FL 34450
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 2007-05-10 Karen Eberly 417 NE 4th Ave., Gainesville, FL 32601
 2007-05-10 Annie Falk 600 Tarpon Way, Palm Beach, FL 33480
 2007-05-10 Maryjo Farco 587 Midway Dr A, Ocala, FL 34472
 2007-05-10 Joel Frye 4020 SE 29TH CT, Ocala, FL 34480
 2007-05-10 Lewis Fuik 2005 Coral Creek Dr., Pensacola, FL 32506
 2007-05-10 Cindy Funkhouser 6042 16th Ave N, St Petersburg, FL 33710
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Oil Rigs into Florida Fish Farms?

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 2007-05-10 nancy gibson 101 Mattie Kelly Blvd., Destin, FL 32541
 2007-05-10 Rob Gonzalez 8840 Lake Park Circle N., Davie, FL 33328
 2007-05-10 Elizabeth Hagan 4863 Via Palm Lake Unit 803, West Palm Beach, FL 33417
 2007-05-10 Nancy Harris 114 Westminster Blvd., Oldsmar, FL 34677
 2007-05-10 ted hood 9470 Jupiter dr., St.cloud, FL 34773
 2007-05-10 Amy Hornak 3059 Cleveland St., Clearwater, FL 33759
 2007-05-10 Tim Hummel 2409 Santa Cruz Ave., Clearwater, FL 33764
 2007-05-10 Joelle Jaffe 3901 Center Gate Circle, Sarasota, FL 34233
 2007-05-10 Barbara Jolley 252 Mosswood Circle, Winter Springs, FL 32708
 2007-05-10 michaelian kanzer 2944 Whitehead St., miami, FL 33133
 2007-05-10 Anastasia Karas 1507 Georgetowne Ln., sarasota, FL 34232
 2007-05-10 Noah Kessler , , FL
 2007-05-10 Ann Kingsbury 271 Wisteria Rd., St. Augustine, FL 32086
 2007-05-10 Marie Kretzschmar 1506 W. River Shore Way, Tampa, FL 33603
 2007-05-10 Ken Kwo 5902 Willow Creek Ct., New Port Richey, FL 34655
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 2007-05-10 William McAllister 1403 Old Millpond Rd., Viera, FL 32940
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Oil Rigs into Florida Fish Farms?

2007-05-10 Linda Tanner
 2007-05-10 Linda Tinsley
 2007-05-10 Tara Veilleux
 2007-05-10 Donna Waldron
 2007-05-10 Jeanne Webster
 2007-05-10 Karen wernert
 2007-05-10 Heidi Wessel
 2007-05-10 Michael Wichman
 2007-05-10 Loren Wieland
 2007-05-10 Whitney Williams
 2007-05-10 windee willoughby
 2007-05-10 Detra Wilson
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 19021 Acorn Rd., Ft. Myers, FL 33912
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 1807 chuli nene, tallahassee, FL 32301
 358 Misty Hollow Dr. West, Jacksonville, FL 32225
 891 W Starjasmine Pl., Beverly Hills, FL 34465
 5000-18 Hwy 17 #102, Orange Park, FL
 220 White Oak Circle, Maitland, FL 32751
 1840 James Ave., Miami Beach, FL 33139
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Oil Rigs into Florida Fish Farms?

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80077
Date: Monday, May 21, 2007 2:00:50 PM

Thank you for your comment, Caroline Forgason.

The comment tracking number that has been assigned to your comment is 80077. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 02:02:02PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
 Draft Comment: 80077

First Name: Caroline
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 Last Name: Forgason
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Comment Submitted:

I am very concerned about neotropical migratory birds, falcons, birds of prey, ducks and geese and shorebirds, all bats which use important flyways which are of HEMISPHERIC IMPORTANCE which pass through the gulf coast area of Texas. The proposed wind power facilities WILL IMPACT these populations. At present, there is a plan for 600 TURBINES along the Laguna Madre and Baffin Bay on the Kenedy Ranch which will in combination with offshore facilities spell devastation for migrating birds and bats. The US must honor the Migratory Bird Treaty and these facilities will affect this in a major way. Please contact me for more information, maps, science, etc. Caroline Forgason

80077-001

Questions about submitting comments over the Web? Contact us at:

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80078
Date: Monday, May 21, 2007 2:07:22 PM
Attachments: fww_comments_of_MMS__alt_energy_peis_final_submitted_80078.pdf

Thank you for your comment, Zach Corrigan.

The comment tracking number that has been assigned to your comment is 80078. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 02:08:31PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
 Draft Comment: 80078

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 Email: zcorrigan@fwwatch.org
 Privacy Preference: Don't withhold name or address from public record
 Attachment: /Users/d11/Desktop/fww comments of MMS alt energy peis final submitted.pdf

Comment Submitted:

Food & Water Watch's comment on MMS's Draft Programmatic Environmental Impact Statement for its Proposed Alternative Energy and Alternate Use Program are attached.

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

MMS Alternative Energy and Alternate Use Programmatic EIS
Argonne National Laboratory
EVS/900
9700 S. Cass Avenue
Argonne, IL 60439

**Re: Draft Programmatic Environmental Impact Statement for
MMS's Proposed Alternative Energy and Alternate Use Program, 72 Fed. Reg. 13307-13308
(March 21, 2007)**

Submitted via internet on May 21, 2007

Dear Mr. Chris Cynes:

Food & Water Watch, a nonprofit consumer rights organization that challenges corporate control and abuse of our food supply and freshwater and ocean resources, is pleased to comment on MMS's Draft Programmatic Environmental Impact Statement (PEIS) for its Proposed Alternative Energy and Alternate Use Program (AEAU program), 72 Fed. Reg. 13307-08 (March 21, 2007). As we explain more fully below, we urge MMS to:

- Drop its unauthorized and unwise, apparent plans to regulate offshore aquaculture;
- Drop its unauthorized and unwise, apparent plans to allow energy platforms to avoid decommissioning and be abandoned at sea;
- Revise the PEIS and republish it for public comment after the agency has issued proposed rules because, as it currently stands, the PEIS is so inadequate it precludes meaningful analysis and is therefore illegal under the National Environmental Policy Act (NEPA);
- Revise the PEIS and republish it for public comment because it fails to assess the likely environmental and socio-economic impacts and mitigation measures related to permitting offshore aquaculture facilities on energy platforms; and
- Revise the PEIS and republish it for public comment because it fails to assess the likely environmental and socio-economic impacts and mitigation measures related to allowing energy companies avoid their decommissioning requirements.

I. The agency's apparent plans to regulate offshore aquaculture are unauthorized and unwise and should be dropped.

In the past, MMS has stated that it was not planning to regulate the alternate activities that the agency would allow under this rulemaking. Rather, it said that it would only govern the decision over whether to allow energy platforms to be converted for such uses, if another agency approves and regulates the underlying activity. In this PEIS, however, the agency does not even assess the environmental and

⁷⁰ 72 Fed. Reg. 77345 at 77346 (December 30, 2005) ("... MMS is not seeking the authority over activities such as aquaculture, but only the decision to allow platforms to be converted to such uses, if the appropriate agency approves the underlying activity.")

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socio-economic impacts of a program that would only grant access to the Outer Continental Shelf (OCS). Instead, it evaluates a program that permits and regulates the resultant activities.² We take this to mean that MMS is likely to propose rules that would both permit and regulate alternate marine-related uses in federal waters. Consequently, MMS would be the primary regulatory body over such uses as offshore aquaculture, provided the aquaculture facilities use energy platforms.

MMS should drop these apparent plans to permit and regulate aquaculture in federal waters. Nothing in the 2005 Energy Act's language or legislative history gives MMS such authority. Newly amended Section (p) (1) (D) of the Outer Continental Shelf Lands Act only gives the Secretary of Interior the authority to issue leases, easements, or rights-of-way for "authorized" marine-related uses. This means that MMS's powers are limited to marine-related activities that either Congress, or another agency, has specifically authorized. Since Congress has not specifically authorized offshore aquaculture in federal waters – having yet to even consider any offshore aquaculture legislation – the agency certainly has no authority under the Energy Act of 2005 alone to permit and regulate aquaculture in federal waters. It is important that MMS not ignore the act's use of the word "authorized" to qualify "marine-related." Before the House-Senate conference committee marked up the bill's conference report, the committee specifically rejected the House version that did not include this language.⁵

Further, MMS should not interpret 2005 Energy Act language to give MMS authority over activities such as aquaculture simply because other statutes, such as the River and Harbors Act (RHA) or Clean Water Act (CWA), already regulate certain other general and related activities of the Outer Continental Shelf. It is true that aquaculture facilities would need to get Section 10 RHA permits and CWA discharge permits in order to operate in federal waters. But these more general permits would also be required for other activities for which the Secretary can grant leases, easements, or rights-of-way on the Outer Continental Shelf under the 2005 Energy Act. The 2005 Energy Act only requires that "marine-related" activities be specifically "authorized," however.

A contrary interpretation of the 2005 Energy Act would directly disregard this administration's policy that the Commerce Department is to have lead authority to establish, implement, and enforce a regulatory system for offshore aquaculture in the U.S. Exclusive Economic Zone.

If MMS chooses to permit and regulate aquaculture facilities under its AEAU program, MMS will be obliged by statute to ensure that these facilities address safety, protect the environment, prevent waste, conserve natural resources of the OCS, and prevent the interference with other reasonable uses.⁴ Because marine aquaculture could significantly harm the environment, human health, and the economies of local fishing communities, and because the amount of resources and specific regulatory expertise that would be needed to adequately address these problems, MMS should instead prohibit energy-platform use by offshore aquaculture facilities.

² Minerals Management Service (MMS), Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Draft Environmental Impact Statement, March 2007, p. 2-5.
³ Compare P.L. 109-58, Section 388, to H.R. 6, Section 2010 (passed by the House on April 21, 2005).
⁴ P.L. 109-58, Section 388.

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(cont.)

II. The agency's apparent plans to allow energy platforms to avoid decommissioning are unauthorized and unwise and should be dropped.

MMS's PEIS states that it considers an "artificial reef" an alternate use of the OCS subject to the AEAU program, thus suggesting that the agency intends to create a federal "rigs-to-reef" program, notwithstanding state policy. The Energy Act of 2005 does not give MMS such authority, however.

Offshore platform operators are currently bound by long-standing and legally binding contractual agreements with the MMS that require the decommissioning of offshore oil and gas rigs that have reached the end of their production cycle. Under these existing contractual agreements and current MMS regulations, disused drilling rigs are required to be removed one year after production ends, except for in a few limited circumstances.³⁰ In order for the platform to depart from these requirements and become an artificial reef, the structure must become part of a state artificial reef program, and the responsible state agency must accept title and liability for the structure and acquire a permit from the U.S. Army Corps of Engineers.³¹ If an energy company transfers its lease, the transferring company continues to be responsible for these obligations should the new operator be unable to perform its decommissioning obligations.³²

As we discussed in our comments on the Advanced Notice of Proposed Rulemaking, the 2005 Energy Act does not give MMS new authority to change its decommissioning requirements. Nothing in the act provides the agency the authority to allow the transfer or termination of original energy-company leaseholder's interests. It also does not address liability issues from environmental and personal and property damages that might arise from modifying lease clearance requirements and allowing the platforms for aquaculture or artificial reef use. Moreover, nothing in the act supersedes the National Fishing Enhancement Act of 1984,³³ its subsequent regulations that lay out the procedures for use of secondary-use materials as artificial reefs,³⁴ or the Ocean Dumping Act,³⁵ which governs the abandonment or dumping of rigs.³⁶

MMS should not be tempted to assert that it has authority to create a federal rig abandonment program because the 2005 Energy Act allows for alternate use of energy platforms "currently or previously used for activities authorized under this Act." (Emphasis added). Just as how an energy company's transfer of a lease does not relieve its decommissioning obligations under current law, any new authority MMS has to allow the transfer of platforms for new, alternate uses does not automatically imply decommissioning relief.

Because nothing in the 2005 Energy Act supersedes existing law or otherwise provides any new authority over rig abandonment, we renew our request that MMS not revisit its decommissioning

³⁰ 30 C.F.R. §§ 250.1700-64 (2006).

³¹ 30 C.F.R. § 250.1730.

³² 30 CFR § 256.62; Minerals Management Service, NTL No. 93-2N, Notice to Lessees and Operators (NTL) of Federal Oil, Gas, and Sulphur Leases in the Outer Continental Shelf, Liability of Assignors, Assignees, and Co-Lessees for Plugging of Wells and Removal of Property on Termination of an Outer Continental Shelf Oil and Gas Lease, October 6, 1993.

³³ 33 U.S.C. §§ 2101-2106 (2000).

³⁴ 33 C.F.R. § 322.5 (2006).

³⁵ 33 U.S.C. §§ 1411-1421.

³⁶ Amended Outer Continental Shelf Land Act, Section (p) (9): "[n]othing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or state agency under any other Federal law."

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requirements to establish a national rigs-to-reef or rigs-to-aquaculture permitting program.

III. The PEIS is so inadequate it precludes meaningful analysis and therefore is contrary to NEPA. MMS should revise and republish it for public comment after the agency proposes program rules. In the alternative, the agency should issue a supplemental EIS.

We understand that proposed rules governing MMS's AEAU program were supposed to be issued with the PEIS but that the rulemaking has been delayed until Summer 2007. Unfortunately, instead of waiting to release its PEIS at that time, MMS has fast-tracked public review of the PEIS so that the public must comment on the PEIS before it knows the details of MMS's program. This severely hinders the public's ability to adequately assess the environmental impacts of the proposed program and is directly contrary to NEPA.

As the agency is surely aware, NEPA requires the agency to issue "a detailed statement . . . on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] alternatives to the proposed action . . . [.] among other disclosures."³⁷ (Emphasis added.) "Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies . . . shall be made available . . . to the public . . ."³⁸ The Council on Environmental Quality's (CEQ) regulations, which implement NEPA, require that a draft environmental impact statement be prepared and circulated prior to the final environmental impact statement.³⁹ The draft "must fulfill and satisfy to the fullest extent possible the requirements established for final statements."⁴⁰ "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."⁴¹

Without the agency having publishing proposed rules, MMS's PEIS is so inadequate that meaningful analysis of the statement is precluded. The PEIS only generally and vaguely describes what its proposed program will entail. In its introduction, the PEIS states that its proposed alternative includes the "development of a program and issuance of regulations governing activities related to granting of a lease, easement, or right-of-way for the production of alternative energy on the OCS; and issuance of regulations for alternate use of existing oil and gas facilities on the OCS."⁴² Certain other components of the programs become apparent elsewhere in the PEIS. For example, the PEIS discusses the particular types of alternate uses and alternative energy projects that the agency expects will apply for leases, easements, or right-of-ways under the program. Further, it indicates that the agency's rules will establish some uniformity across all projects, so as to prevent "possible inconsistent or inadequate mitigation stipulations for some projects, leading to adverse environmental impacts."⁴³ The agency insinuates its regulations will not only grant access to the OCS through a lease, easement, or right-of-way, but also "regulate the resultant activities."⁴⁴ But little other detail is provided about MMS's program. The agency does not even state whether it plans on issuing leases or rights of way for particular alternate uses, even though, in the past, the two types of property rights have been treated radically differently by MMS in terms

³⁷ 43 U.S.C. § 4332(2)(C) (2000).

³⁸ *Id.*

³⁹ 40 C.F.R. § 1502.9(a) (2006).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² MMS, *supra* n. 2, at p. 1-9.

⁴³ *Id.* at Chapters 5 and 6.

⁴⁴ *Id.* at p. 7-13.

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(cont.)

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of public participation and environmental review.²⁴ This failure to adequately describe the program severely hinders the public's ability to adequately assess the environmental impacts.

Perhaps this is most obvious with the likely environmental impacts from program's granting of leases, easements, or rights-of-way for aquaculture and "artificial reefs" as alternate uses of energy platforms. With aquaculture, the PEIS states that an effective mitigation measure for minimizing the effects of water pollution is by monitoring "feed, animal waste, antibiotics, and chemicals used for operations . . .".²⁵ But, assuming that MMS's proposed program will mandate that fish farms monitor their pollution discharges, a number of non-site-specific impacts could result depending on how MMS proposes to implement the monitoring requirement. Certainly if MMS were to propose relying on EPA's Clean Water Act effluent guidelines for monitoring, the program would have a far different effect on the environment than if the proposed rules have other, additional requirements. EPA's guidelines were not based on the projected cumulative effects of wastes from new marine offshore aquaculture facilities,²⁶ and were not designed to limit the use of pesticides or antibiotics used on the farms,²⁷ so monitoring would be considerably limited compared to a more comprehensive approach.

With MMS's apparent plans to allow decommissioned energy platforms to be used as "artificial reefs," the expected non-site-specific environmental impacts would be greatly dependent on the scope of the program. For example, if MMS intends its rig abandonment program to pre-empt state programs or have weaker environmental safeguards or incentivize greater donation of energy platforms than exist under existing state programs, then greater environmental and socioeconomic damage could result from MMS's program than under state programs. Without the agency's discussion of the program, however, the public's evaluation of these impacts is nearly impossible.

Absent the release of its proposed rules, meaningful analysis of the effects of MMS's program is precluded. Not only is the PEIS inadequate under CEQ's regulations, it is inimical to the long-standing precedent that an EIS must adequately describe the project.²⁸ Alternatively, if MMS was not to revise its PEIS, it should issue a supplemental PEIS. CEQ regulations direct that a draft or final environmental impact statement be supplemented if "[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns."²⁹ With the present PEIS, the agency's issuance of proposed rules for its program will amount to the first adequate description of the program, thus making it a substantial change to the program. Therefore, this change requires a supplemental EIS. Even if the program that is proposed does not alter the PEIS's assessment, a supplemental environmental impact

²⁴For example, compare 30 C.F.R. § 256.23(b) ("For an oil and gas lease sale Call Area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information [.]") to 30 C.F.R. § 250.160, which provides no such provisions for MMS approval of rights of ways or easements.

²⁵MMS, *supra* n. 2, at p. 6-11.

²⁶U.S. Environmental Protection Agency, "Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Notice of Data Availability," 58 Fed. Reg. 75067-105 (December 29, 2003).

²⁷U.S. Environmental Protection Agency, "Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category," 69 Fed. Reg. 51891-930 (August 23, 2004) ("In the final rule, EPA is also not establishing numeric limits for any drug or pesticide, but is requiring CAAP facilities to ensure proper storage of drugs, pesticides and feed to prevent spills and any resulting discharges of drugs and pesticides.")

²⁸*See e.g. Montgomery v. Ellis*, 364 F. Supp. 517 (S. D. Ala. 1973).

²⁹40 C.F.R. § 1502.9(c)(1).

statement is required under law so that the public can have an opportunity to evaluate the program's effects.³⁰

IV. The PEIS is contrary to NEPA because it fails to assess the likely environmental and socio-economic impacts as well as mitigation measures related to permitting offshore aquaculture facilities on energy platforms

The PEIS mentions some of the many potential significant environmental and socio-economic impacts from offshore aquaculture, including water pollution, possible impacts on fishing communities, and the effects of fish wastes, pharmaceuticals, growth-enhancing chemicals, and antifoulant chemicals on seafloor and ocean habitats. MMS's PEIS gives a rather cursory consideration of these impacts, however, and fails to include other impacts that can be expected from aquaculture. Moreover, the agency fails to discuss the likely cumulative effects related to any platform alternate use, and does not include a reasonable discussion of mitigation measures for offshore aquaculture. The agency's PEIS, therefore, conflicts with NEPA, which requires that the agency take a "hard look" at the environmental effects that a project will have on the environment.³¹ We discuss some of these most glaring deficiencies below.

Benthic and Ocean Ecosystem Impacts

Specifically, while the PEIS mentions the possible water quality and benthic habitat effects of open ocean aquaculture, it only cites a 2005 survey of scientific literature. It should supplement this discussion with more recent studies, including a January 2006 published study of an open ocean aquaculture facility that found waste from fish cages, even in deep open ocean waters, had "grossly polluted" the sea floor and "severely depressed" marine life at some sampling sites very close to the fish cages and that, over the course of 23 months, these effects had spread to sites up to 80 meters away.³²

Moreover, the PEIS fails to mention that entire ecosystems surrounding aquaculture cages may be altered due to the fish and invertebrate aggregations, and this could disrupt the surrounding ecological equilibrium for years to come.³³ An April 2006 study by Canadian researchers found that one possible ecological effect of salmon-farm pollution is increased mercury contamination in surrounding wild-fish

³⁰*Q. Commonwealth v. Watt*, 716 F.2d 946 (1st Cir. 1983) (finding an MMS environmental impact statement inadequate and the agency's decision not to issue a supplemental EIS improper, when the agency radically revised its estimates of oil likely to be found on tracts it intended to lease: "As we have previously held, unless a document has been publicly circulated and available for public comment, it does not satisfy NEPA's EIS requirements . . . One cannot . . . argue that a NEPA statement is not legally necessary because the agency already knows what the statement will contain or because the agency plans to make its decision without regard to what the [environmental impact statement] shows. In some instances, the statement may change a mind that previously thought itself unchangeable; in other instances the statement will simply allow the public to judge more fully the merits of the decision that was made."); *Natural Resources Defense Council v. Hughes*, 437 F. Supp. 981 (D.D.C. 1977) (finding a Department of Interior final programmatic environmental impact statement for a coal leasing program insufficient because the described program changed from one that emphasized interdepartmental/federal identification of coal reserves in the proposed statement to one that relied almost entirely upon industry and public nominations in the final statement).

³¹*Id.* at 988.

³²Lee, Han W. et al., *Temporal Changes in the Polychaete Infaunal Community Surrounding a Hawaiian Mariculture Operation*, *Marine Ecology Progress Series*, Vol. 307, 175-185 (January 2006).

³³Alton, D.E., Cabarcas, A., Cuppetta, J., Bennett, D.D., Keene-Melzoff, S., Bonilla, J., Cortés, R., *Environmental and Social Impacts of Sustainable Offshore Cage Culture Production in Puerto Rico* at Waters University of Puerto Rico - University of Miami (unpublished, 2005).

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populations. The researchers sampled fish caught in the traditional fishing grounds of indigenous people and found that mercury was significantly higher in wild fish caught near the salmon farms than far from them. This contamination was attributed to fish-farm waste, which the researchers believed might be altering the food web, forcing wild fish to eat organisms that are more highly contaminated with mercury. The researchers also said they believed that the fish-farm waste might be tainted with mercury and might be altering water chemistry to make the mercury in surrounding sediments more easily absorbed by aquatic organisms.⁵⁴

Additionally, MMS needs to evaluate the potential impact of dredging, drilling, and other sediment and bottom-habitat disturbances from aquaculture, including potential harms to seagrass, coral die-off, and displacement of ocean wildlife, as well as impacts from resuspension of any persistent, bioaccumulative toxicants already in the sediments.

Effects on Fish Populations

The FEIS glaringly fails to assess the increased pressure that aquaculture can place on depleted fish populations due to fish farming's necessary use of large quantities of fishmeal and fish oil.⁵⁵ Studies show that it takes up to six pounds of wild fish to produce the fishmeal required to produce one pound of farmed fish.⁵⁶ Increased catches of forage fish for fishmeal could reduce the amount of fish available for larger fish, marine mammals, and seabirds, and thus have wide-ranging environmental and socioeconomic impacts.⁵⁷ For example, aquaculture could reduce the supplies of wild fish that people consume directly, especially in the Global South. For example, in Southeast Asia, small pelagic species, such as mackerel, herring, anchovy, and sardines, provide an integral protein source for people.⁵⁸

Effects of Escaped Fish

The FEIS mentions some of the problems of escaped fish, but it fails to discuss the effects of escaped genetically-modified farmed fish. Thirty-five fish species are now capable of being genetically modified. The U.S. Food and Drug Administration (FDA) is reviewing a petition filed by Aqua Bounty Technologies Inc. to genetically modify farmed salmon. The company is also genetically modifying other fish such as Arctic char, trout, tilapia, turbot, and halibut, but has not yet submitted a marketing permit to the FDA. A 2001 National Research Council report states that transgenic fish raise the "greatest science-based concerns associated with animal biotechnology, in large part due to the uncertainty inherent in identifying environmental problems early on and the difficulty of remediation once a problem has been identified."⁵⁹

Effects on Human Health

⁵⁴Dubruyn, A.M., Trudel, M., Eydin, N.A., Harding, J., McNally, H., Mountain, R., Orr, C., Urban, D., Verenitch, S., Mazumder, A., Ecosystemic Effects of Salmon Farming Increase Mercury Contamination in Wild Fish, *Environ. Sci. & Technol.* (published on the web on April 19, 2006).

⁵⁵Naylor, R.L., Goldberg, R.J., Primavera, J.H., Kautsky, N., Beveridge, M.C.M., Clay, J., Folke, C., Lubchenco, J., Mooney, H., and Troell, M., Effect of Aquaculture on World Fish Supplies, *Nature* 405, 1017-1024 (2000).

⁵⁶*Ibid.*

⁵⁷Goldburg, R., Elliot, M., and Naylor, R., "Marine Aquaculture in the United States, Environmental Impacts and Policy Options?" 2001.

⁵⁸Naylor, et al., *supra* note 31.

⁵⁹National Research Council, *Animal Biotechnology: Science-Based Concerns* (Washington, DC: National Academies Press, 2004) at <http://books.nap.edu/books/0309/084395.html/73.html#page-top>.

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MMS does not evaluate the human health effects from the antibiotics, contaminants, and drugs used in farm-raised fish.⁶⁰ For example, studies indicate that farm-raised salmon have higher levels of chemical contaminants than wild salmon, including higher levels of PCBs, a group of known carcinogens.⁶¹ A 2005 analysis found that chemical levels in farm-raised salmon were so high that in order to lower the cancer risk to the middle of the acceptable range, people should effectively stop eating the salmon.⁶² Also, a large body of scientific literature demonstrates that the use of a wide variety of antibiotics in aquaculture results in the emergence of antibiotic-resistant bacteria in aquaculture environments, the increased antibiotic resistance in fish pathogens, the transfer of these resistance determinants to the bacteria of land animals and to human pathogens, and alterations of the bacterial flora both in sediments and in the water column. The use of large amounts of antibiotics increases the opportunities for the residual antibiotics to be present in fish products, possibly undermining the ability of doctors to effectively treat human bacterial infections.⁶³

Particular Environmental Problems Related to Aquaculture Facilities that Use Energy Platforms

MMS's EIS also does not examine the particular environmental problems that exist from allowing offshore aquaculture facilities on energy platforms. For example, allowing marine aquaculture on energy platforms could add extra stress to the platforms, creating a safety hazard. Further, regardless of whether aquaculture operations are conducted on a producing or an inactive platform, issues of liability for personal injury, property damage, and environmental damages will arise.⁶⁴

Cumulative Effects

The agency fails to discuss the cumulative impacts of any of the expected alternate uses, saying:

Because neither the nature nor locations of future alternate use projects are known at this time, their cumulative impacts are not discussed. Such impacts would be considered during the evaluation and approval of actual proposed projects. Also, impacts from alternate uses in most cases are expected to be less than those from existing oil and gas platforms, as discussed in Section 7.5.1.1.⁶⁵

First of all, the last sentence makes a false comparison because the alternate uses of platforms that MMS is considering allowing under its program are not alternatives to the conventional oil- and gas-

⁶⁰NIEPA requires an environmental impact statement to disclose the significant health and socioeconomic consequences of the environmental impact of a proposed action. *Baltimore Gas & Electric Co. v Natural Resources Defense Council, Inc.*, 462 US 87 (1983).

⁶¹Hine, R.A., Foran, J.A., Carpenter, D.O., Hamilton, M.C., Knuth, B.A., and Schwager, S.J., Global Assessment of Organic Contaminants in Farmed Salmon, 303 *Science* 226 (Jan. 9, 2004), available at http://www.pewtrusts.com/pdf/salmon_study.pdf.

⁶²Foran, J.A., Risk-Based Consumption Advice For Farmed Atlantic and Wild Pacific Salmon Contained with Dioxins and Dioxin-like Compounds, *Environ. Health Persp.* 552-6 (May 2005).

⁶³Reviewed in Cabello, F.C., Heavy Use of Prophylactic Antibiotics in Aquaculture: A Growing Problem for Human and Animal Health and for the Environment, *Environmental Microbiology* (2006) 8 (7), 1137-1144.

⁶⁴David Douglass, Oil and Gas Views on Use and Reuse of Petroleum Structures for Mariculture, in Reggio, V.C., Jr., comp. 1996. Mariculture associated with oil and gas structures: a compendium. In: Proceedings: Fourth Information Transfer Meeting, November 17, 1994, New Orleans, La. OCS Study MMS 96-0050. U.S. Dept. of the Interior, Mineral Management Service, Gulf of Mexico OCS Region, New Orleans, La. 32 pp.

⁶⁵MMS, *supra* n. 2, at pp 7-33 to 34.

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drilling uses of platforms discussed in Section 7.5.1.1, but rather alternatives to platform decommissioning and removal. If anything, allowing platforms to be abandoned at sea after production will make more drilling in other locations more affordable and spur drilling.

Second, MMS's failure to assess the cumulative impacts from alternate uses directly contradicts NEPA, which requires that the agency assess the cumulative impacts that a project will have on the environment. This requirement applies even for an agency's general programmatic environmental impact statement.⁴² It is inappropriate to defer consideration of cumulative impacts to a future date.⁴³ Even if the exact contours of future projects that will seek permitting under MMS's program are uncertain, uncertainty alone does not excuse a failure to address the cumulative impacts of such projects when they are foreseeable. As many courts have iterated, reasonable forecasting and speculation is implicit in NEPA.⁴⁴

In the present PEIS, MMS says it cannot assess the cumulative impacts of alternate uses of energy platforms because neither the nature nor locations of future alternate use projects are known. But elsewhere in the PEIS, the agency describes the likely alternate uses that it expects to take advantage of the program, such as aquaculture and artificial reefs, and – although in a cursory and incomplete manner – it discusses some of the negative impacts of these uses. One must ask how it is possible for the agency to assess these impacts but not be able to make any forecast, whatsoever, of the cumulative impacts that might result from some of the projected alternate uses.

Of course, if the agency were to take more than a casual examination of activities such as aquaculture and abandoned rigs, it is likely to reveal that far more is unknown than known about the potential cumulative impacts from these activities and that it is impossible for the agency to make a reasonable forecast about their impacts. For example, Food & Water Watch's recent report, *Seas of Doubt*, details the lack of published research on the environmental impacts of the four marine "offshore" aquaculture projects currently operating in U.S. waters and highlights the significant discrepancies in what research does exist. The four pilot fish farm projects – with a total of 13 cages – are actually in state waters. None of the projects are operating near their full capacity or under market conditions. A project in New Hampshire, which has very small annual production, is the only project that has been running for more than five years.⁴⁵ Moreover, for rigs converted to artificial reefs, a comprehensive MMS study in 2003 determined more research was needed in the Pacific on whether the rigs converted to reefs will contribute to larger, healthier fish populations as opposed to simply fish-aggregation devices.⁴⁶

This does not mean, however, that the agency can just throw up its proverbial hands, say that the cumulative impacts from these alternate uses are unknown, and charge forward with its program. Rather,

⁴² Cf. *Texas Committee on Natural Resources v. Van Winkle*, 197 F. Supp. 2d 586 (N.D. Tex. 2002).
⁴³ *Neighbors of Cuddey Mt. v. United States Forest Serv.*, 137 F.3d 1372 (9th Cir. 1998).

⁴⁴ See e.g., *Texas Committee on Natural Resources*, 197 F. Supp. 2d 586 (finding a programmatic environmental impact statement for a flood control project inadequate where the agency failed to consider the cumulative impacts of foreseeable future projects connected to the flood control project but that had not yet been proposed). See also *Scientists' Inst. for Pub. Info. Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973) ("... we must reject any attempt by agencies to shirk their responsibility under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry'").

⁴⁵ See Food & Water Watch, *Seas of Doubt: Upstart Fish Farms Feed on Theory, Not Fact*, June 2006.

⁴⁶ See Carr, M.H., McGinnis, M.V., Forrester, G.E., Harding, J., and Rainaldi, P.T., *Consequences of Alternative Decommissioning Options to Reef Fish Assemblages and Implications for Decommissioning Policy*. MMS OCS Study 2003-053. Marine Science Institute, University of California, Santa Barbara, California. MMS Cooperative Agreement Number 14-35-0001-30758. 104 pages.

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the agency must either get the needed information or disclose what information is unavailable and give the public the opportunity to assess this as part of their consideration of proposed alternatives. Specifically, under the CEQ regulations, if missing information is essential and the costs are not exorbitant in securing it, the agency must obtain the information and include it in its statement. If such information cannot be obtained, the agency is to state what information is incomplete or unavailable, explain how it is relevant, and include a summary of the existing relevant scientific information.⁴⁷ Since MMS has provided no such information, its PEIS is inadequate and contrary to the requirements of NEPA.

Mitigation Measures

MMS's PEIS is woefully inadequate in its evaluation of mitigation measures for the likely environmental and socio-economic impacts of aquaculture facilities on energy platforms. NEPA requires more than a perfunctory description of mitigation measures in order for the agency's analysis to be considered a "hard look" evaluation of environmental consequences.⁴⁸ Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.⁴⁹ A mere listing of mitigation measures does not qualify as the reasoned discussion required by NEPA.⁵⁰ This standard applies even to more general programmatic environmental impacts statements.⁵¹

The PEIS's entire description of mitigation measures is as follows:

A number of mitigative actions can be taken to avoid adverse impacts from aquaculture operations on the OCS. Native species should be cultured. Feed, animal waste, antibiotics, and chemicals used for operations should be monitored to avoid pollution of the surroundings by excess material. Humane methods should be used for discouraging the approach of predators, and facility siting should avoid essential fish habitat and traditional fishing grounds.

Earlier in the PEIS, the agency states that "[w]ith proper design and management, impacts to the environment would be negligible to moderate."⁵²

This is precisely the meager listing of mitigation measures that courts have found impermissible.⁵³ The agency includes no reasoned analysis about how the listed mitigation measures would result in negligible or moderate harm. For example, the agency's determination that "native species should be cultured" is directly belied by the agency's own analysis on the previous page, which says:

Even with the selection of native species, there are concerns with the escape of cultured organisms into open waters and their interaction with wildlife. Escapes may compete for food and habitat, reproduce and cause a change in population outside the natural distribution range, cause a shift in the

⁴⁷ 40 C.F.R. § 1502.22.

⁴⁸ *Neighbors of Cuddey Mt. v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See e.g., *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002).

⁵² MMS, *supra* n. 2, at pp. 6-11 to 12.

⁵³ Cf. *League of Wilderness Defenders/Blue Mts. Biodiversity Project*, *supra* n. 53 (finding mitigation measures for an EPA pesticide spraying program inadequate because, among other reasons, the agency could not demonstrate why buffer zones existing only around wilderness areas were sufficient).

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wild gene pool, or spread disease.⁵⁴

The agency includes no discussion of other mitigation measures, such as tracking and tagging, which might mitigate some of the harms posed from escaped fish.

It is also unclear how pollution monitoring alone could actually reduce waste from aquaculture facilities. MMS does not discuss other measures, such as comprehensive mapping, planning, zoning, or siting criteria, all of which might mitigate the harmful impacts from fish waste.

These comments do not even cover the numerous mitigation measures that the agency would have to evaluate should MMS reissue an adequate PEIS that actually covers all of the potential problems (detailed above) from offshore aquaculture.

V. The PEIS is contrary to NEPA because it fails to assess the likely environmental and socio-economic impacts as well as mitigation measures related to allowing rigs to avoid decommissioning.

As with its discussion of offshore aquaculture, the PEIS's evaluation of "artificial reefs" as an alternate use is woefully inadequate because the agency fails to include an adequate discussion of its significant environmental and socio-economic impacts and mitigation measures.

Under MMS's existing regulations, energy platforms are established as temporary fixtures – only allowed to remain until one year after energy production ceases. If MMS is planning to alter these rules to allow energy platforms to persist for long periods of time, it must examine the potential negative effects to the environment. MMS's PEIS, however, fails to evaluate many of the likely negative impacts of rig abandonment including corrosion; the impacts on visual resources; and the impacts on competing uses, such as commercial fishing. Furthermore, the agency fails to assess the potential impacts resulting from any increased oil and gas drilling due to MMS's program. Below we discuss two issues about which we are particularly concerned.

Mercury Pollution

MMS's PEIS fails to evaluate how allowing more energy platforms to persist in the ocean environment for a longer period of time could expose fish populations to toxic drilling wastes such as mercury and how this could harm local fishing communities. Recent reports have highlighted a connection between oil and gas rigs and elevated mercury levels in surrounding sediments and fish. Data from a 1996 MMS study indicates that shrimp and fish caught within two miles of a platform with the most contaminated sediments had average mercury levels that were five times higher than those caught around the least contaminated rig sites.⁵⁵ The mercury contamination found around energy platforms is attributable to drilling "muds."⁵⁶ And while EPA's 2001 guidelines limit the amount of mercury in

⁵⁴MMS, *supra* n. 2, at p. 6-11.

⁵⁵Raines, Rig Shrimp Test High for Mercury, *Mobile Register*, January 27, 2002, analyzing data from Kennicutt, M.C., Green, R.H., Montagna, P., and Roscigno, P.F., 1996. Gulf of Mexico Offshore Operations Monitoring Experiment (GOOMEQ), Phase I: Sublethal responses to contaminant exposure - introduction and overview. *Canadian Journal of Fisheries, Aquatic Sciences*. 53: 2540-2553.

⁵⁶Treffrey, J.H., Trocine, R.P., McKelaine, M.L., Rember, R.D., Concentrations of Total Mercury and Methylmercury in Sediment Adjacent to Offshore Drilling Sites in the Gulf of Mexico, 2002.

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drilling muds,⁵⁷ approximately 1,600 pounds of mercury are still legally deposited into the Gulf of Mexico from the 1,091 new wells drilled each year.⁵⁸

Some scientists believe that the environment around oil and gas rigs alone may transform the mercury found in sediments into biologically available methylmercury, which can contaminate fish and other marine organisms.⁵⁹ In order to understand how likely this might be, more research is needed on methylmercury levels in stationary creatures living in the sediments around platforms.⁶⁰ Further, research is needed to determine whether waste from fish farms placed near these rigs could further stimulate the methylation process, leaving wild fish populations at higher risk of mercury exposure.

Therefore, MMS's PEIS should examine and address how allowing more energy platforms to persist in the ocean environment for a longer period of time could have the individual or cumulative effects of increasing the bioavailability of toxic drilling wastes such as mercury; the potential bioaccumulation of these wastes in wild fish populations; and how this could harm local fishing communities.

Effects on Fish Populations

MMS's PEIS fails to examine the possible negative effects of rig abandonment on fish populations. It only states that fish populations will benefit. MMS's assessment fails to recognize, however, that long-standing energy platforms may not contribute to larger, healthier fish populations and may simply act as fish-aggregation devices.

In the Pacific, for example, the best available science indicates that more research is needed before it can be concluded that fish populations would benefit from rig abandonment. A comprehensive MMS study in 2003 determined that what was specifically needed for California was "a study of the relative performance (survival, growth, reproduction) of species on platforms and natural reefs."⁶¹ But to date, studies have primarily compared fish densities at natural reefs with those at platforms, and have not looked at relative health of the fish populations. When they have, the studies have been limited to a few populations. The Select Scientific Advisory Committee on Decommissioning, a body specifically commissioned "to explore[] possible marine ecological implications related to the decommissioning of California's twenty-seven offshore oil production platforms" concluded that predicting the effects of leaving disused offshore oil and gas platforms in place is impossible given the current state of scientific knowledge.⁶²

For all regions, before MMS can state that fish populations will benefit from rigs turned into

⁵⁷40 C.F.R. §§ 435.10-435.47. See also, Effluent Limitations Guidelines and New Source Performance Standards for the Oil and Gas Extraction Point Source Category, OMB Approval Under the Paperwork Reduction Act: Technical Amendment, Final Rule, 66 Fed. Reg. 6850-6919 (Jan. 22, 2001); Oil and Gas Extraction Point Source Category, Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory, Final Rule, 61 Fed. Reg. 66086-66130 (December 15, 1996).

⁵⁸U.S. Mineral Management Service, Gulf of Mexico Program, "Estimate of Annual Metric Tons of Mercury Discharged with Barite."

⁵⁹Gill, G., "Chemistry of Mercury to Methylmercury" presentation at Mercury Forum, May 20-21, 2002.

⁶⁰Other studies, such as Treffrey, et al., *supra* n. 56, have not done such an analysis.

⁶¹See Carr, et al., *supra* n. 46.

⁶²Holbrook, S.J., Ambrose, R.F., Botsford, L., Carr, M., Ramondi, P.T., Tegner, M.J., Ecological Issues Related to Decommissioning of California's Offshore Production Platforms, 2000.

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reefs, without qualification, the agency needs to demonstrate whether there is sufficient platform habitat to significantly enhance rebuilding or yield on a regional level. Further, the agency must show how its program would not make certain fish species more vulnerable to over-exploitation by attracting increased commercial or recreational fishing.

Mitigation Measures

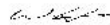
The PEIS' s discussion of mitigation measures is woefully inadequate. For example, MMS states: "Oil and gas platforms selected for alternate use with secondary use as an artificial reef that is considered to be important should be easily accessible to the public if the structures are intended to provide recreational opportunities such as fishing and diving."⁶⁴ But the agency does not assess how ensuring that platforms are accessible to recreational fishing might in fact contribute to more environmental damage from over-exploitation.

Further, while MMS mentions the effects that "nonroutine" events such as storms may have on the environment, it offers no mitigation measures. Hurricanes Rita and Katrina destroyed more than 100 offshore oil platforms.⁶⁴ According to news reports, in 2004 to 2005, hurricanes ripped 28 of the 30-million-pound drilling rigs from their offshore locations.⁶⁵ Those rigs sunk or careened through oil fields, smashing into permanent production platforms and dragging anchors or supporting legs weighing thousands of pounds across dozens of pipelines.⁶⁶ MMS needs to explore mitigation measures for the environmental impacts caused by storms, because MMS' s guidance for anchor systems is only sufficient to prevent platforms from being dislodged during a Category 1 hurricane, even though six Category 4 or higher storms have hit the Gulf region since 2004.⁶⁷

Conclusion

In summary, MMS should drop its apparent plans to regulate aquaculture and change its decommissioning regulations because nothing in the 2005 Energy Act' s language or legislative history gives MMS such authority. As a policy matter, it is inappropriate to allow energy companies to avoid paying the costs of removing their rigs, estimated to be \$9.9 billion from 1985-2020, so that our oceans can become their own private dumping grounds. Further, MMS needs to revise the PEIS and publish it for public comment after the agency has issued proposed rules and after it assesses the likely environmental and socio-economic impacts and mitigation measures related to regulating offshore aquaculture and allowing energy companies avoid their decommissioning requirements.

Sincerely,


Wenonah Hauter
Executive Director
Food & Water Watch

⁶³MMS, *supra* n. 2, at p. 6-7.

⁶⁴Mineral Management Service Press Release "MMS Updates Hurricanes Katrina and Rita Damage," located at <http://www.mms.gov/ocohires/2006/hires0501.htm>.

⁶⁵Ben Raines, "Drillers say rigs ruckus not enough" *Mobile Register* (June 25, 2006).

⁶⁶*Id.*

⁶⁷*Id.*

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives; ocsenergywebmaster@anl.gov;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80079
Date: Monday, May 21, 2007 2:18:36 PM
Attachments: Offshore_Renewables_-_Marine_Comm_comments_on_MMS_PEIS_80079.doc

Thank you for your comment, Vivian Newman.

The comment tracking number that has been assigned to your comment is 80079. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 02:19:53PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80079

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Comment Submitted:
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May 2007

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Dear Sirs: Re: Draft Programmatic EIS for Alternative Energy on the OCS, etc.

The following comments are submitted on behalf of the National Marine Wildlife and Habitat Committee, Sierra Club. The Sierra Club is the nation's oldest and

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largest grassroots environmental organization. We place high priority on protecting, restoring, and maintaining the integrity of natural marine ecosystems, and we urge MMS to develop a program that protects these ecosystems from inappropriate human uses.

Because these ecosystems face significant modification by man-induced climate change, ecosystems and marine life will respond to these changes and human activities must adapt to them too. We support a rapid and orderly phase-out of extraction and use of fossil fuels from the Outer Continental Shelf (OCS), and conversion to low-emission, renewable sources of energy. The aim should be to replace, not supplement oil and gas drilling with these renewable projects. In light of the complexity of marine ecosystems and the as yet unknown effects from these newer technologies, however, we urge MMS to adopt the Precautionary Principle, to assure a thorough consultation round, and to seek every opportunity to incorporate new understanding as it becomes available through existing and future monitoring programs, including those already run by other agencies such as National Marine Fisheries Service and the Environmental Protection Agency.

We will attempt here to identify our chief concerns with the new MMS Program and to our best ability point to steps that must be taken for wise management of human activities in the marine environment. Fundamental is the setting of high environmental standards for the site-specific decisions and operations, including site selection, regulation, monitoring, and enforcement. The Draft PEIS, while amassing an impressive amount of documentation, leaves many questions open and it is our hope that this means that MMS will be open to new information about effects on the marine environment and to state-of-the-art technologies to address these.

Scope

It is exquisitely ironic that MMS has chosen not to address alternative energy sources for the OCS in the Alaska Region "because of the relatively harsh environment" – and yet it is MMS itself that has just proposed in its Five Year Plan to open up the Beaufort and Chukchi Seas and Bristol Bay to a far more risky and pollution-prone activity, oil and gas drilling, and on top of it proposing royalty relief!

It has been remarked that technology (and market forces which some have tagged a Gold Rush) for alternative energy are moving faster than public policy. While we accept that MMS must play triage in choosing which technologies to address first, based on these pressures and budget limitations, we must not lose sight of the goal of more comprehensive OCS planning. Information gathering and assessment should therefore not be entirely shelved for tidal, ocean current, solar, and hydrogen. On the other hand, MMS should decline to address Alternate Uses for existing rigs as these are not germane to advancing energy

policy, but rather are perceived as a way of letting lessees off the hook for decommissioning and liability as is legally binding now.

Consultation

Until Congress addresses the call by the U.S. Ocean Commission and constituents for an integrated ocean governance structure by providing a legal framework for a new management regime for our nation's marine waters, MMS must fully utilize all collaborative mechanisms (not limited to those required by law) and work in partnership on a regional basis with states and the public as well as other federal agencies. It is imperative that MMS not interpret its new authority as a right to pre-empt states, for example, with regard to location of underwater pipelines, seafloor anchoring systems, and major industrial offshore and onshore installations associated with Liquefied Natural Gas (LNG) terminals and related infrastructure. Need we remind you that a basic principle in our United States form of democratic participatory government is that of "checks and balances"?

Siting

Projects should be excluded from areas with Habitats of Particular Concern (HAPC) and Essential Fish Habitat (EFH) important for fish and shellfish; critical habitat and migratory pathways for marine mammals and other protected resources and trust species; fragile or unstable geological structures; areas in proximity to a federal or state Marine Protected Area (MPA) and candidate areas for MPA designation; and busy shipping routes or other areas of heavy human use that would make risks of conflict with existing users unusually high. Ideally, MMS working with public and private partners should proactively identify appropriate zones in the ocean that pose minimal threats to the environment and are economically feasible so as to avoid a protracted leasing and permitting process for desirable projects. An example of mapping for this purpose is The Scotian Shelf: An Atlas of Human Activities. See <http://www.mar.dfo-mpo.gc.ca/oceans/e/essim/essim-atlas-e.html>.

Leasing

Whether for a lease, easement or right of way, MMS must assure full compensation to the federal treasury from those seeking to profit from the use of public trust submerged lands. As mentioned above, decommissioning (as well as liability for displacement during storm events) must clearly lie with the lessee.

Need for Baseline Biological, Geological, and Environmental Data
MMS should carry out site specific baseline studies as part of the permitting/management oversight process. Proponents or preferably an objective third party should also carry out the necessary monitoring program detailed in the MMS permit. MMS should develop an ecosystems status report for regions in

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which alternative energy projects can potentially be deployed accompanied by an evaluation of the impacts (including cumulative and synergistic effects) of various human activities that may occur.

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and perhaps some environmental protection goals as well. If one combines economic feasibility, multiple use conflicts and environmental protection goals, there won't be that many appropriate locations for large scale wind farms. Because of environmental concerns and in order to avoid unnecessary and counter-productive conflicts with other existing and potential human uses of these shallow water areas, MMS should promote smaller scale wind turbine development and distributed power.

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Monitoring

MMS in coordination with relevant agencies should assess the current level of aquatic monitoring in US waters and identify what specific monitoring is needed. Categories to be addressed in both the baseline studies and the monitoring program include at least the following: meteorological, ocean water column physical dynamics, ocean water column chemistry, ocean water column biology, benthic sediment and habitat mapping, benthic chemistry, sound and vibration levels (natural versus anthropogenic) and biotic response behavior; water transparency; biodiversity of living, protected and natural trust resources; influence of bathymetry on hydrography
The monitoring program must be part of an adaptive management approach.

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The National Academy of Sciences has noted the lack of government guidance to communities and developers. See <http://nationalacademies.org/morenews/20070503.html>.

MMS should make every effort to fill in the gaps here with environmental analyses for offshore wind projects so that new projects can move forward without unnecessary and costly delays.

Current Technologies

Because it is anticipated that there will be many demonstration projects during the early phases, MMS should spell out in adequate detail the expectations for any "experimental" or demonstration projects. Once the experimental phase has concluded, MMS should require utilization of "highest state of the art" equipment and operation in the leasing and permitting phase. Experimental or demonstration permits should not preclude a full administrative review and leasing/permitting process upon completion of the experiment.

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Alternate Uses

MMS has chosen not to address tidal power in this PEIS. We urge that MMS similarly decline to develop a program for offshore aquaculture and artificial reefs and instead focus its efforts and resources on renewable energy which is so urgently needed and should be the primary purpose of this program. "Let the cobbler stick to his last."

80079-012

Hydrokinetic and Wave Energy

As a starting point, we recommend that the aquatic environmental issues for hydropower raised at a Department of Energy (DOE) workshop in 2005 be pursued. These include alteration of bottom habitats, suspension of sediments and contaminants, alteration of hydraulics and hydrologic regimes, strike and entanglement of fish and other aquatic organisms, diving birds, and marine mammals, impingement on screens, effects of electromagnetic fields, toxicity of paints and other chemicals, noise, and effects of multiple units. See <http://www.fisheries.org/afs/publications/fisheriesmag/3204.pdf>
http://hydropower.inl.gov/hydrokinetic_wave/

80079-010

Aquaculture

In view of the lack of an overall federal leasing and regulatory regime for offshore aquaculture, and the unsuitability of MMS as an interim authority, we urge that you shelve this as you have done for tidal and current energy.

80079-013

Artificial Reefs

It is apparent that MMS' interest in artificial reefs too is off topic from its charge to oversee OCS energy production; instead, as for aquaculture on rigs, this is an ill-disguised attempt to find a device for exempting lessees from their legally binding responsibility for decommissioning and liability.

80079-014

Wind power

Space is particularly in demand in shallower waters near to the coast. Industrial scale wind farms are of concern to those interested in protecting the marine environment from inappropriate human development. Since most of the proposed wind farms within the EEZ are likely to be in shallow waters, areas protected from storms and in regions where they can easily connect to the regional electric grid, there are likely to be conflicts with other human activities

80079-011

Moreover, the touted benefits are not unmixed with problems. It is certainly true that if one places hard substrate tower/legs in an otherwise featureless benthic habitat that epibenthic plants and animals characteristically found in areas of hard substrates will settle and grow. Although this will increase production of epibenthic biota and the pelagic/reef-associated fish that feed on these organisms, this change from a sedimentary to a hard substrate/associated fish community will diminish the food sources in the sediments and the demersal fish communities. Many local factors will determine in this situation whether the result of the energy infrastructure results in "increased fish production" or simply "attraction". Adding a small amount of hard substrate from a project is not likely

80079-015

to increase the productivity of the benthic invertebrates or associated fish communities. The three dimensional structure addition provided by the energy infrastructure might increase the relative abundance of "reef-associated" fish species (like the red snapper associated with oil/gas platforms in the Gulf of Mexico), but for a species that is being overfished, this attraction component would not be a positive outcome (like shooting fish in a barrel). The attraction component is likely to be greater in situations where the energy infrastructure is installed in featureless sedimentary environments. Yet another aspect of this problem is an exacerbation of user conflicts.

All of this again begs the question of the need for rationalizing ocean governance driven by the natural biological, chemical and physical structure of the ocean and least disruptive places to locate human infrastructure. This framework should also lead to reassigning authorities to the agencies most equipped for the roles.

In conclusion, we reiterate that while the marine area is becoming increasingly crowded with demands on space for development, to exploit resources, and for other purposes, our common goals must be clean, healthy, biologically diverse, safe, and productive oceans and seas. This means confronting the policy shifts needed in the face of global climate change, redirecting our energy policy by replacing, not adding to fossil fuel extraction on the OCS with clean and renewable energy production, moving forward as speedily as information and assessment can support, working with the ecosystems not against them, and adapting both policy and technology accordingly.

Thank you for the opportunity to comment.

Sincerely,

Vivian Newman
National Marine Wildlife and Habitat Committee
Sierra Club
P.O.Box 388
South Thomaston ME 04858
207-594-7534
newviv@adelphia.net

Questions about submitting comments over the Web? Contact us at: ocsenerywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

80079-015
(cont.)

MMS Alternative Energy & Alternative Use Programmatic EIS
Argonne National Laboratory, S/900
9700 South Cass Avenue
Argonne, IL 60439

21 May 2007

Dear Sirs: Re: Draft Programmatic EIS for Alternative Energy on the OCS, etc.

The following comments are submitted on behalf of the National Marine Wildlife and Habitat Committee, Sierra Club. The Sierra Club is the nation's oldest and largest grassroots environmental organization. We place high priority on protecting, restoring, and maintaining the integrity of natural marine ecosystems, and we urge MMS to develop a program that protects these ecosystems from inappropriate human uses.

Because these ecosystems face significant modification by man-induced climate change, ecosystems and marine life will respond to these changes and human activities must adapt to them too. We support a rapid and orderly phase-out of extraction and use of fossil fuels from the Outer Continental Shelf (OCS), and conversion to low-emission, renewable sources of energy. The aim should be to replace, not supplement oil and gas drilling with these renewable projects. In light of the complexity of marine ecosystems and the as yet unknown effects from these newer technologies, however, we urge MMS to adopt the Precautionary Principle, to assure a thorough consultation round, and to seek every opportunity to incorporate new understanding as it becomes available through existing and future monitoring programs, including those already run by other agencies such as National Marine Fisheries Service and the Environmental Protection Agency.

We will attempt here to identify our chief concerns with the new MMS Program and to our best ability point to steps that must be taken for wise management of human activities in the marine environment. Fundamental is the setting of high environmental standards for the site-specific decisions and operations, including site selection, regulation, monitoring, and enforcement. The Draft PEIS, while amassing an impressive amount of documentation, leaves many questions open and it is our hope that this means that MMS will be open to new information about effects on the marine environment and to state-of-the-art technologies to address these.

Scope

It is exquisitely ironic that MMS has chosen not to address alternative energy sources for the OCS in the Alaska Region "because of the relatively harsh environment" – and yet it is MMS itself that has just proposed in its Five Year Plan to open up the Beaufort and Chukchi Seas and Bristol Bay to a far more risky and pollution-prone activity, oil and gas drilling, and on top of it proposing royalty relief!

It has been remarked that technology (and market forces which some have tagged a Gold Rush) for alternative energy are moving faster than public policy. While we accept that MMS must play triage in choosing which technologies to address first, based on these pressures and budget limitations, we must not lose sight of the goal of more

comprehensive OCS planning. Information gathering and assessment should therefore not be entirely shelved for tidal, ocean current, solar, and hydrogen. On the other hand, MMS **should** decline to address Alternate Uses for existing rigs as these are not germane to advancing energy policy, but rather are perceived as a way of letting lessees off the hook for decommissioning and liability as is legally binding now.

Consultation

Until Congress addresses the call by the U.S. Ocean Commission and constituents for an integrated ocean governance structure by providing a legal framework for a new management regime for our nation's marine waters, MMS must fully utilize all collaborative mechanisms (not limited to those required by law) and work in partnership on a regional basis with states and the public as well as other federal agencies. It is imperative that MMS not interpret its new authority as a right to pre-empt states, for example, with regard to location of underwater pipelines, seafloor anchoring systems, and major industrial offshore and onshore installations associated with Liquefied Natural Gas (LNG) terminals and related infrastructure. Need we remind you that a basic principle in our United States form of democratic participatory government is that of "checks and balances"?

Siting

Projects should be excluded from areas with Habitats of Particular Concern (HAPC) and Essential Fish Habitat (EFH) important for fish and shellfish; critical habitat and migratory pathways for marine mammals and other protected resources and trust species; fragile or unstable geological structures; areas in proximity to a federal or state Marine Protected Area (MPA) and candidate areas for MPA designation; and busy shipping routes or other areas of heavy human use that would make risks of conflict with existing users unusually high. Ideally, MMS working with public and private partners should proactively identify appropriate zones in the ocean that pose minimal threats to the environment and are economically feasible so as to avoid a protracted leasing and permitting process for desirable projects. An example of mapping for this purpose is The Scotian Shelf: An Atlas of Human Activities. See <http://www.mar.dfo-mpo.gc.ca/oceans/e/essim/essim-atlas-e.html>.

Leasing

Whether for a lease, easement or right of way, MMS must assure full compensation to the federal treasury from those seeking to profit from the use of public trust submerged lands. As mentioned above, decommissioning (as well as liability for displacement during storm events) must clearly lie with the lessee.

Need for Baseline Biological, Geological, and Environmental Data

MMS should carry out site specific baseline studies as part of the permitting/management oversight process. Proponents or preferably an objective third party should also carry out the necessary monitoring program detailed in the MMS permit. MMS should develop an ecosystems status report for regions in which alternative energy projects can potentially be deployed accompanied by an evaluation of the impacts (including cumulative and synergistic effects) of various human activities that may occur.

Monitoring

MMS in coordination with relevant agencies should assess the current level of aquatic monitoring in US waters and identify what specific monitoring is needed. Categories to be addressed in both the baseline studies and the monitoring program include at least the following: meteorological, ocean water column physical dynamics, ocean water column chemistry, ocean water column biology, benthic sediment and habitat mapping, benthic chemistry, sound and vibration levels (natural versus anthropogenic) and biotic response behavior; water transparency; biodiversity of living, protected and natural trust resources; influence of bathymetry on hydrography. The monitoring program must be part of an adaptive management approach.

Current Technologies

Because it is anticipated that there will be many demonstration projects during the early phases, MMS should spell out in adequate detail the expectations for any "experimental" or demonstration projects. Once the experimental phase has concluded, MMS should require utilization of "highest state of the art" equipment and operation in the leasing and permitting phase. Experimental or demonstration permits should not preclude a full administrative review and leasing/permitting process upon completion of the experiment.

Hydrokinetic and Wave Energy

As a starting point, we recommend that the aquatic environmental issues for hydropower raised at a Department of Energy (DOE) workshop in 2005 be pursued. These include alteration of bottom habitats, suspension of sediments and contaminants, alteration of hydraulics and hydrologic regimes, strike and entanglement of fish and other aquatic organisms, diving birds, and marine mammals, impingement on screens, effects of electromagnetic fields, toxicity of paints and other chemicals, noise, and effects of multiple units. See <http://www.fisheries.org/afs/publications/fisheriesmag/3204.pdf> http://hydropower.inl.gov/hydrokinetic_wave/

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Space is particularly in demand in shallower waters near to the coast. Industrial scale wind farms are of concern to those interested in protecting the marine environment from inappropriate human development. Since most of the proposed wind farms within the EEZ are likely to be in shallow waters, areas protected from storms and in regions where they can easily connect to the regional electric grid, there are likely to be conflicts with other human activities and perhaps some environmental protection goals as well. If one combines economic feasibility, multiple use conflicts and environmental protection goals, there won't be that many appropriate locations for large scale wind farms. Because of environmental concerns and in order to avoid unnecessary and counter-productive conflicts with other existing and potential human uses of these shallow water areas, MMS should promote smaller scale wind turbine development and distributed power.

The National Academy of Sciences has noted the lack of government guidance to communities and developers. See

<http://nationalacademies.org/morenews/20070503.html>.

MMS should make every effort to fill in the gaps here with environmental analyses for offshore wind projects so that new projects can move forward without unnecessary and costly delays.

Alternate Uses

MMS has chosen not to address tidal power in this PEIS. We urge that MMS similarly decline to develop a program for offshore aquaculture and artificial reefs and instead focus its efforts and resources on renewable energy which is so urgently needed and should be the primary purpose of this program. "Let the cobbler stick to his last."

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Sincerely,

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newviv@adelphia.net

From: ocsenergywebmaster@anl.gov
To: mail_ocsenergyarchives;
Subject: OCS Alternative Energy and Alternate Use Programmatic EIS Comment 80080
Date: Monday, May 21, 2007 2:19:21 PM

Thank you for your comment, Michal Bennett.

The comment tracking number that has been assigned to your comment is 80080. Once the comment response document has been published, please refer to the comment tracking number to locate the response.

Comment Date: May 21, 2007 02:20:42PM CDT

OCS Alternative Energy and Alternate Use Programmatic EIS
Draft Comment: 80080

First Name: Michal
Last Name: Bennett
Organization: US Citizen
Address:
City:
State: OR
Zip:
Country: USA
Email: michalbbb@yahoo.com
Privacy Preference: Withhold address only from public record

Comment Submitted:
thank you for the opportunity to comment

I eat fish and I swim and intend to leave the earth to future generations

I am totally outraged that you might consider using degrading/disintegrating or potentially harmful platforms as an option for fish farms.

Please choose another way as this will be disastrous as indicated by the following.

These type of farms...
.. Threaten the environment and consumers because of the connection between oil and gas rigs and elevated mercury levels in surrounding sediments and fish.
.. Harm consumers by using chemicals, antibiotics, and hormones to raise fish in crowded conditions.

.. Harm the marine environment through transmission of disease and parasites to wild fish populations.
.. Deplete wild fish populations because farmed finfish require wild fish for feed.
.. Harm marine ecosystems when non-native or genetically distinct farmed fish escape and interact with wild fish populations.

I respectfully request that you consider these factors and do not exceed the authority granted to you under the Energy Act of 2005.

thank you for your consideration

Questions about submitting comments over the Web? Contact us at: ocsenergywebmaster@anl.gov or call the OCS Alternative Energy and Alternate Use Programmatic EIS Webmaster at (630)252-6182.

80080-001
(cont.)

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