

# Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf: Proposed Rule

## Draft Environmental Assessment



# **Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf: Proposed Rule**

## **Draft Environmental Assessment**

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

**Area:** Outer Continental Shelf

**Responsible**

**Agency:** Minerals Management Service (MMS)  
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**Abstract:** The draft environmental assessment evaluates the promulgation of proposed regulations for the Alternative Energy and Alternate Use Program. The proposed regulations address the process by which MMS will authorize alternative energy and alternate use projects on the Outer Continental Shelf. The EA incorporates by reference the Programmatic Environmental Impact Statement titled “*Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.*”

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## 1 INTRODUCTION

This environmental assessment (EA) analyzes the proposed regulations for the Minerals Management Service (MMS) Alternative Energy and Alternate Use Program. Section 388 of the Energy Policy Act of 2005 (EPAct) amended the Outer Continental Shelf Lands Act (OCSLA) to grant the Secretary of the U.S. Department of the Interior (Secretary) the discretionary authority to issue leases, easements, or rights of way for activities on the Outer Continental Shelf (OCS) that produce or support production, transportation, or transmission of energy from sources other than oil and gas. The Secretary delegated this authority to the MMS. Examples of potential alternative energy projects include, but are not limited to, wind energy, wave energy, ocean current energy, solar energy, and hydrogen production. The MMS prepared a programmatic environmental impact statement (EIS) to evaluate the establishment of a comprehensive, nationwide MMS Alternative Energy and Alternate Use Program on the Federal OCS through rulemaking. The Programmatic EIS was published prior to the completion of the regulations and was used to inform MMS during the preparation of the proposed rule. This EA was prepared to aid in the determination of whether or not a new or supplemental EIS is necessary for the support of the rulemaking. This EA incorporates by reference all of the relevant material in the Programmatic EIS (i.e., *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007* (U.S. Department of the Interior, Minerals Management Service, 2007)). The Programmatic EIS can be viewed on the MMS website at [ocsenergy.anl.gov](http://ocsenergy.anl.gov).

The geographic area of coverage for the proposed regulation is the entire OCS, excluding national marine sanctuaries. However, the Programmatic EIS only analyzed the potential activities that may occur off of the Atlantic, Pacific, and Gulf Coasts. Alaska and Hawaii were scoped out of the EIS because activities are not expected on the Federal OCS in those areas within the foreseeable future. The proposed regulations are generic and not linked to any geographic region. The MMS published an interim policy for resource assessment and technology testing and received over 40 nominations for areas of interest. All of the nominations were within the geographic areas described in the EIS. Therefore, the MMS chose not to include analyses of the Alaska and Hawaii OCS areas in this EA. In addition, should any proposal be submitted for activities off of either Alaska or Hawaii, a National Environmental Policy Act (NEPA) review will be conducted.

## 2 PROPOSED ACTION

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

The EPAct amended Section 8 of the OCSLA (43 United States Code [U.S.C.] 1337) to give the Secretary of the U.S. Department of the Interior (USDOI) authority to issue a lease,

easement, or ROW on the OCS for activities that are not otherwise authorized by the OCSLA, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law if those activities:

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

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

## **2.1 Purpose and Need**

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

## **2.2 Alternative Energy Development on the OCS**

The activities related to the development of alternative energy resources on the OCS as a result of the granting of a lease, easement, or ROW are discussed in Chapter 3 of the Programmatic EIS and would include:

- Characterization of a specific site or sites on the OCS for the purposes of assessing the feasibility of constructing an alternative energy facility;
- Construction, operation, and decommissioning of demonstration-scale alternative energy and related facilities on the OCS and related environments (i.e., State



waters/onshore) for the purposes of assessing the commercial feasibility of certain technologies; and

- Construction, operation, and eventual decommissioning of commercial-scale alternative energy production and related facilities on the OCS and related environments.

The MMS expects to receive the following types of applications for alternative energy development on the OCS over the period 2007–2014:

- Demonstration-scale wind energy (e.g., new foundation technologies),
- Commercial-scale wind energy,
- Demonstration-scale wave energy,
- Commercial-scale wave energy,
- Demonstration-scale ocean current energy, and
- Commercial-scale ocean current energy.

On November 6, 2007, the MMS published a request for information and nominations from industry for offshore alternative energy resource assessment and technology testing activities on the OCS. The MMS received over 40 nominations in response to this request. Most of the nominations received on the Atlantic Coast are for meteorological and oceanographic data collection facilities that would support wind generation projects off Massachusetts, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, and Georgia. Nominations for areas off Florida focused on ocean current information collection and technology. On the Pacific Coast, the main interest is in wave energy, and nominations were received off California, Oregon, and Washington. Regarding Alaska, a single nomination was received for a tidal power project for Cook Inlet is located in State waters and, therefore, outside of the jurisdiction of the MMS.

### **2.3 Alternate Use of Existing Structures on the OCS**

Siting, construction, operation, and decommissioning of oil and gas platforms and other structures on the OCS are regulated by the MMS under the OCSLA, as amended (43 U.S.C. 1331 et seq.). Current regulations (30 Code of Federal Regulations [CFR] Part 250 Subpart Q) require that an oil and gas structure be removed and the site cleared to predevelopment conditions within one year after cessation of all production on the lease. Under the proposed action, the MMS would establish a program that would permit, on a discretionary basis, alternate uses for these platforms during and after production, subject to the requirements of subsection 8(p) of the OCSLA. Under the proposed action, the MMS would issue proposed regulations that would describe the means by which MMS would process any applications for such alternate uses of existing OCS structures. An overview of potential alternate uses for these facilities is given in

Chapter 6 of the Programmatic EIS. These uses include alternative energy production, offshore aquaculture, and research and monitoring. The MMS will evaluate and conduct an appropriate NEPA review of individual proposals to modify or convert the existing facilities for alternate use activities.

## **2.4 Overview of the MMS Alternative Energy and Alternate Use Program**

To accommodate the proposed regulations to support the Alternative Energy and Alternate Use Program, MMS is proposing to add a new part to subchapter B of title 30 of the CFR. The new part 285 would be titled “Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf” and would address the requirements of section 388(a) of the EPLA, which amended the OCSLA to add section 8(p).

### ***Approach to Rulemaking***

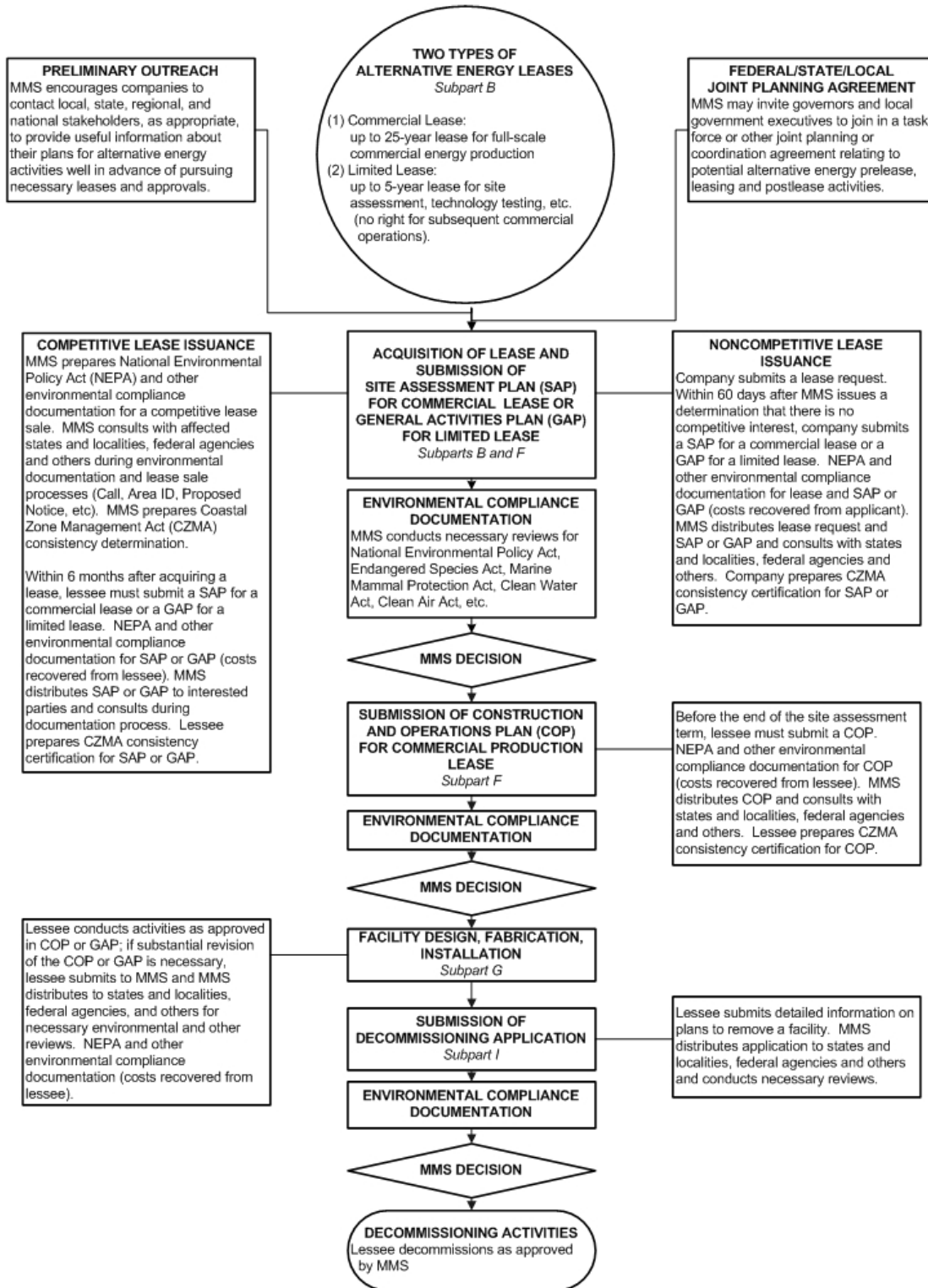
These proposed regulations were developed to provide a regulatory framework for leasing and managing OCS alternative energy project activities and authorizing activities that involve the alternate use of OCS Lands Act-permitted facilities. These proposed regulations are also intended to encourage orderly, safe, and environmentally responsible development of alternative energy sources on the Outer Continental Shelf. The MMS expects that alternative energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of alternative energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. These proposed regulations were developed to allow for a broad spectrum of alternative energy development, without specific requirements for each type of energy production. However, as we gain experience with alternative energy development on the OCS, we may update our regulations to include energy resource-specific provisions and incorporate by reference appropriate documents.

This proposed rule (30 CFR part 285) applies to all aspects of the alternative energy and alternate use program; except for the procedures applying to appeals of MMS decisions or orders, which are covered in 30 CFR Part 290, Subpart A. We are also proposing to revise 30 CFR Part 290.2 to clarify the MMS decisions on bids under this program are exempt from the appeals process at 30 CFR Part 290 and covered under § 285.118(c). This section describes the procedures for an unsuccessful bidder to apply for reconsideration by the Director for alternative energy leases, ROW grants, RUE grants, or alternate use rights-of-use and easements (Alternate Use RUE).

### ***Overview of the Project Development Process***

Figure 1 depicts the general process that the MMS proposes for managing OCS alternative energy program activities under the proposed rule.

**Figure 1. PROPOSED OCS ALTERNATIVE ENERGY PROCESS FOR LEASES**



## *Types of Access Rights*

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

### *Commercial and Limited Leases*

The MMS would issue two types of leases: (1) commercial or (2) limited. A commercial lease would convey the access and operational rights necessary to produce, sell, and deliver power on a commercial scale, through spot market transactions or a long-term power purchase agreement. A commercial lease provides the lessee full rights to apply for and receive the authorizations needed to assess, test, and produce alternative energy on a commercial scale over the long term (approximately 30 years). A commercial lease would include the right to a project easement, which would be issued to allow the lessee to install gathering, transmission, and distribution cables to transmit electricity; pipelines to transport other energy products (i.e. hydrogen); and appurtenances on the OCS, as necessary, for the full enjoyment of the lease. The project easement would be issued upon approval of the Construction and Operations Plan (for Commercial Leases) or General Activities Plan (for Limited Leases).

A limited lease would convey access and operational rights for activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use. This would include leases issued for site assessment or to develop and test new alternative energy technology. Limited leases would be issued for a short term, 5 years. Under the provisions of these regulations, limited leases could be renewed, but they could not be converted to commercial leases. If the holder of a limited lease wished to pursue commercial development on the OCS, it would need to obtain a new commercial lease through the leasing process, as defined in these regulations.

### *RUE Grants and ROW Grants*

A RUE grant would be issued by MMS to authorize the use of a designated portion of the OCS to support alternative energy activities on a lease or other approval not issued under this part, e.g., on a State-issued lease.

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

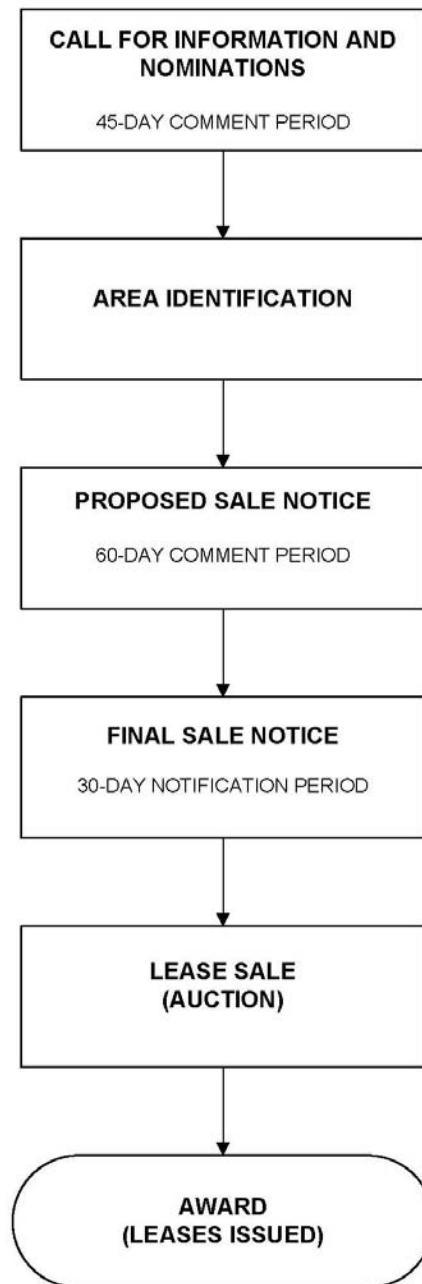
### *Alternate Use RUE*

The MMS would issue an alternative use RUE for the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law.

### ***Obtaining Access Rights***

The EPO Act requires MMS to award leases, ROW grants, and RUE grants competitively unless MMS makes a determination of no competitive interest. In conjunction with the competitive leasing process, MMS would prepare NEPA and other environmental compliance documents. The MMS would put forth a call for interest, designate the lease or grant area, and publish in the Federal Register all other notices and calls relating to the sale. If, after putting forth a call for interest, MMS determines that there is no competitive interest in that particular OCS area, MMS may proceed in issuing a lease or grant noncompetitively. Whether a company acquires a lease or grant competitively or noncompetitively, it must comply with all MMS lease stipulations or conditions in the grant. The steps in the competitive leasing process are shown in Figure 2.

**Figure 2: Steps in the Proposed OCS Alternative Energy Competitive Leasing Process**



## ***Federal Compliance for the Leasing Process***

All activities permitted under this part must comply with all relevant Federal laws, regulations, and statutes including, but not limited to, those listed in the table below.

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

<b>Responsible Federal Agency/Agencies</b>	<b>Statute/Executive Order</b>	<b>Summary of Pertinent Provisions</b>
Council on Environmental Quality	National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.)	Requires Federal Agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment, and to consider alternatives to such proposed actions.
U.S. Fish and Wildlife Service (USFWS); National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS)	Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)	Requires Federal Agencies to consult with the USFWS and the NMFS to ensure that proposed Federal actions are not likely to jeopardize the continued existence of any species listed at the Federal level as endangered or threatened, or to result in the destruction or adverse modification of critical habitat designated for such species.
USFWS (walrus; sea and marine otters; polar bears; manatees and dugongs); NMFS (seals, sea lions, whales, dolphins, and porpoises)	Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407)	Prohibits, with certain exceptions, the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States.
NMFS	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act) (16 U.S.C. 1801 et seq.)	Requires Federal Agencies to consult with the NMFS on proposed Federal actions that may adversely affect Essential Fish Habitats that are necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.
U.S. Environmental Protection Agency (USEPA); U.S. Army Corps of Engineers (USACE); NOAA	Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq.)	Prohibits, with certain exceptions, the dumping or transportation for dumping of materials including, but not limited to, dredged material, solid waste, garbage, sewage, sewage sludge, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and other waste into ocean waters without a permit from the USEPA. In the case of ocean dumping of dredged material, the USACE is given the permitting authority.
NOAA	National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.)	Prohibits the destruction, loss of, or injury to any sanctuary resource managed under the law or permit and requires Federal Agency consultation on Federal Agency actions, internal or external to national marine sanctuaries, that are likely to destroy, injure, or cause the loss of any sanctuary resource.

Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
USFWS	Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712); Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” (January 10, 2001)	Requires that Federal Agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of Understanding with the USFWS, which, among other things, ensure that environmental reviews mandated by NEPA evaluate the effects of Agency actions on migratory birds, with emphasis on species of concern.
NOAA’s Office of Ocean and Coastal Resource Management (NOAA OCRM)	Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.)	Specifies that coastal States may protect coastal resources and manage coastal development. A State with a coastal zone management program approved by NOAA OCRM can deny or restrict development off its coast if the reasonably foreseeable effects of such development would be inconsistent with the State’s coastal zone management program.
USEPA; MMS	Clean Air Act, as amended (CAA) (42 U.S.C. 7401 et seq.)	<p>Prohibits Federal Agencies from providing financial assistance for, or issuing a license or other approval to, any activity that does not conform to an applicable, approved implementation plan for achieving and maintaining the National Ambient Air Quality Standards (NAAQS).</p> <p>Requires USEPA (or an authorized State agency) to issue a permit before construction of any new major stationary source or major modification of a stationary source of air pollution. The permit—called a Prevention of Significant Deterioration permit for stationary sources located in areas that comply with NAAQS and a Nonattainment Area Permit in areas that do not comply with NAAQS—must control emissions in the manner prescribed by USEPA regulations to either prevent significant deterioration of air quality (in attainment areas), or contribute to reducing ambient air pollution in accordance with an approved implementation plan (in nonattainment areas).</p> <p>Requires the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a Risk Management Plan to USEPA.</p> <p>In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCSLA for clean air regulations.</p>



Responsible Federal Agency/Agencies	Statute/Executive Order	Summary of Pertinent Provisions
USEPA; U.S. Coast Guard (USCG); MMS	Clean Water Act (CWA), Section 311, as amended (33 U.S.C. 1321); Executive Order 12777, "Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990"	<p>Prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the OCSLA, or which may affect natural resources belonging to the United States.</p> <p>Authorizes the USEPA and USCG to establish programs for preventing and containing discharges of oil and hazardous substances from nontransportation-related facilities and transportation-related facilities, respectively.</p> <p>Directs the Secretary of the Interior (MMS) to establish requirements for preventing and containing discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports.</p>
USEPA	CWA, sections 402 and 403, as amended (33 U.S.C. 1342 and 1343)	Requires a National Pollutant Discharge Elimination System permit from USEPA (or an authorized State) before discharging any pollutant into territorial waters, the contiguous zone, or the ocean from an industrial point source, a publicly owned treatment work, or a point source composed entirely of storm water.
USACE; USEPA	CWA, section 404, as amended (33 U.S.C. 1344)	Requires a permit from the USACE before discharging dredged or fill material into waters of the United States, including wetlands.
USCG	Ports and Waterways Safety Act, as amended (33 U.S.C. 1221 et seq.)	Authorizes the USCG to implement, in waters subject to the jurisdiction of the United States, measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include, but are not limited to, reporting and operating requirements, surveillance and communications systems, routing systems, and fairways.
USACE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.)	Section 10 (33 U.S.C. 403) delegates to the USACE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the United States. The OCSLA extends the jurisdiction of the USACE, under section 10, to the seaward limit of Federal jurisdiction.
USEPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.)	<p>Requires waste generators to determine whether they generate hazardous waste and, if so, to determine how much hazardous waste they generate and notify the responsible regulatory agency.</p> <p>Requires hazardous waste treatment, storage, and disposal facilities (TSDF's) to demonstrate in their permit applications that design and operating standards established by the USEPA (or an authorized State) will be met.</p> <p>Requires hazardous waste TSDF's to obtain permits.</p>

<b>Responsible Federal Agency/Agencies</b>	<b>Statute/Executive Order</b>	<b>Summary of Pertinent Provisions</b>
National Park Service (NPS); Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469-469c-2)	Requires each Federal Agency to consult with the Advisory Council on Historic Preservation and the State or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located; authorizes the USDOJ Secretary to undertake salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Executive Order 13007, "Indian Sacred Sites"(May 24, 1996)	Requires Federal Agencies to facilitate Native American access to and ceremonial use of sacred sites on Federal lands, to promote greater protection for the physical integrity of such sites, and to maintain the confidentiality of such sites, where appropriate.
Federal Aviation Administration (FAA)	Federal Aviation Act of 1958 (49 U.S.C. 44718); 14 CFR 77	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA as necessary to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

### *NEPA Compliance*

The NEPA process helps public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. It provides the tools to carry out these goals by mandating that every Federal Agency prepare an in-depth study of the impacts of "major federal actions significantly affecting the quality of the human environment" and alternatives to those actions, and by requiring that each agency make that information an integral part of its decisions. The NEPA also requires that Agencies make a diligent effort to involve the interested and affected public before they make decisions affecting the environment.

The MMS is the lead Federal Agency for NEPA compliance for alternative energy and alternate use activities on the OCS. Some of the information MMS requests under this part is in support of other Federal Agencies information requirements associated with compliance with the laws and regulations that they enforce.

### *Coastal Zone Management Act (CZMA) Compliance*

Each Coastal State has a Federally-approved coastal management plan (CMP). In compliance with CZMA mandates found at section 307(c)(1), when the MMS conducts a competitive lease sale for leases or grants under this part, the MMS will determine if the sale activity is reasonably likely to affect any land or water use of natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination to the affected State(s) at least 90 days before the lease sale. This consistency determination will include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the State's CMP. If the affected State(s) agree with MMS's determination, the MMS may proceed with the competitive sale. If the affected State(s) disagree, the MMS will follow the procedures as outlined in 15 CFR 930 Subpart C.

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

Table 2. NEPA and CZMA Requirements for Leases and Grants

Activity	MMS Process	NEPA Documentation	Lease or grant conditions	CZMA
<b>Leases</b>				
Competitive lease sale.	Conduct competitive lease sale and issue leases.	Covers lease sale area.	Stipulations, mitigation, and conditions established in lease contract.	Covers a Federal Agency activity and must comply with 15 CFR Part 930 Subpart C.
Non-competitive lease.	Negotiate noncompetitive lease and issue decision on the Site Assessment Plan or General Activities Plan.	Covers identified noncompetitive lease area and proposed activities in the Site Assessment Plan or General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in lease and Site Assessment Plan or General Activities Plan.	Covers a non-Federal activity that requires a Federal license or permit and must comply with 15 CFR Part 930, Subpart D.
<b>Grants</b>				
Competitive ROW grants and RUE grants.	Conduct competitive ROW grant or RUE grant sale and issue grants.	Covers ROW grant- and RUE grant-specific sale area.	Stipulations and conditions established in grant award.	Covers a Federal Agency activity and must comply with 15 CFR Part 930 Subpart C.
Non-competitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate General Activities Plan.	Covers identified noncompetitive grant site and proposed activities in the General Activities Plan.	Stipulations, conditions, mitigation, and monitoring established in grant award and General Activities Plan.	Covers a non-Federal activity that requires a Federal license or permit and must comply with 15 CFR Part 930, Subpart D.

## ***Development Process***

### ***Developing Leases And Grants***

Once a company acquires a lease, ROW grant, or RUE grant, it must submit certain plans to MMS for development of the lease or grant. The various plans serve as a blueprint for site development, construction, operations, and decommissioning. The MMS has specific requirements for each phase of the lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease would require the applicant to submit a Site Assessment Plan (SAP) and receive MMS approval of that plan before beginning those activities. The SAP would undergo the appropriate NEPA reviews and may require either an EIS or an EA. The SAP must demonstrate how the proposed activities will be conducted to comply with relevant Federal statutes such as the Coastal Zone Management Act, Endangered Species Act, Marine Mammal Protection Act, and Clean Water Act.

For a commercial lease, after performing site assessment activities, the lessee would be required to submit and receive MMS approval of a Construction and Operations Plan (COP) before initiating any development and production activities on a lease. Like the SAP, the COP would undergo the appropriate NEPA reviews and may require either an EIS or an EA. Like the SAP, the COP must also comply with relevant Federal statutes.

For limited leases, ROW grants, and RUE grants, the lessee would be required to submit a General Activities Plan (GAP), which covers all activities on the lease or the grant including site assessment, development, operations, and decommissioning. Like the SAP and COP, the GAP would undergo the appropriate NEPA reviews and must comply with relevant Federal Statutes.

### ***Revenue Sharing***

The new subsection 8(p)(2)(B) of the OCSLA (43 U.S.C. 1337(p)(2)(B)) requires payment to certain Coastal States of 27 percent of the revenues received by the Federal Government from any projects under this section that are located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. (For ease of description, this 3-mile-wide area adjoining State submerged lands will be referred to in this preamble as the “8(g) zone,” a term widely used to refer to the identical 3-mile area described in section 8(g) of the OCSLA (43 U.S.C. 1337(g)). In addition, when a project extends into the 8(g) zone of at least one State, subsection extends eligibility for a share of the revenues to any other State with a coastline that is located within 15 miles of the geographic center of the project. The Secretary is required to establish a formula by rulemaking that provides for the equitable distribution of payments to eligible States based on the proximity of each State’s coastline to the geographic center of the project.

### ***Operations***

The regulations that address operations cover environmental management, safety management, inspections, facility assessments, and decommissioning. The regulations on

operations are designed to prevent or minimize the likelihood of harm or damage to the marine and coastal environments. The structure of the regulations is based on adaptive management. The operator would be required to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the operator would be required to comply with applicable Federal and State regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental affects, inspections, facility assessments, and incident reporting.

### ***Alternate Use of Existing Facilities***

These regulations establish general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This includes general provisions that explain how MMS will approve and regulate such alternate use activities on the OCS. We are proposing to authorize such activities through the issuance of an Alternate Use RUE.

These regulations explain how applicants can request an Alternate Use RUE; how MMS will decide whether to issue Alternate Use RUEs; how Alternate Use RUEs will be competitively issued (if MMS determines that competitive interest exists); the terms of such authorizations; required payments to MMS; necessary financial assurance; other administrative issues such as assignment, suspension, and termination; and decommissioning of approved alternate use structures.

In addition to the proposed provisions in Subpart J, the MMS has proposed associated revisions to MMS's existing oil and gas decommissioning regulations, found in 30 CFR Part 250, Subpart Q, that clarify the oil and gas platform owner's obligations for decommissioning, in the event MMS approves alternate uses of the platform.

## **2.5 Part by Part Summary of the Proposed Regulations**

The proposed regulations are divided into 10 subparts addressing the provisions of the regulation. Many of the provisions in the subparts address administrative procedures. A few of the subparts directly describe provisions that are incorporated to address environmental consequences. A brief description of each subpart follows. A complete discussion of each subpart is presented in the preamble of the proposed regulation. The environmental analysis of these provisions is discussed in Section 4.3.1 of this EA.

Subpart A establishes MMS's authority and the purpose for the regulations. It also addresses the general requirements that apply to all activities regulated under this part, for example, the qualifications for holding leases, ROW grants and RUE grants on the OCS and the appeals process. The definitions for these regulations are also in Subpart A. Section 285.103 establishes times when MMS may approve departures from the requirements established in the regulations. The MMS will consider a departure when it is needed to: facilitate the proper development of a lease or grant under this part; conserve natural resources; protect life (including human and wildlife), property, or the marine, coastal, or human environment; or protect sites, structures, or objects of historical or archaeological significance. Section 285.108 requires that if any action is

filed alleging that a company, operating under these regulations, is insolvent or bankrupt, the company must notify MMS within 3 days of learning of the action.

Subpart B addresses the administrative process for obtaining a lease. The process includes general lease information, the competitive lease process, the competitive lease award process, the noncompetitive lease award process, and commercial and limited lease terms. Section 285.108 requires that before issuing leases under this part, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal Agencies, with the Governor of any affected State, and the executive of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act).

Subpart C addresses the issuance of ROW grants and RUE grants and the financial requirements to qualify.

Subpart D addresses the lease and grant administration. This includes noncompliance and cessation orders; designation of operator; and lease or grant assignment, suspension, renewal, termination, relinquishment, contraction, and cancellation. The MMS may issue a cessation order during the term of a lease or grant when the lessee or grantee fails to comply with an applicable law, regulation, order, or provision of a lease, grant, plan or other MMS approval under this part. A cessation order will set forth what measures are required, including reports that are required to be prepared and submitted to MMS, in order to resume activities on a lease or grant. Upon receiving a cessation order, the lessee must cease all activities on the lease or grant as specified in the order. The MMS may authorize certain activities during the period of the cessation order. The MMS reserves the right to suspend operations when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance. The MMS may approve a renewal request to conduct substantially similar activities that were authorized under the original lease or grant. The MMS will not approve a renewal request that involves development of alternative energy not originally authorized in the lease or grant. The Secretary may cancel a lease or grant if it was obtained fraudulently, if it failed to comply with laws and regulations, for national security reasons, or if activities cause serious harm or damage to natural resources, life, property, etc.

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

Subpart F addresses the plans and information requirements. The provisions in this subpart describe the basic requirements for the SAP, the COP, and the GAP. An SAP describes the surveys that the lessee plans to perform and other activities proposed for the characterization of a commercial lease, including a project easement. At a minimum, the SAP must describe how the lessee will conduct: (1) physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); (2) resource assessment surveys (e.g., meteorological and oceanographic data collection); and (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys). The COP describes the construction, operations, and conceptual decommissioning plans under a commercial lease, including any project easement. The COP must describe all planned facilities that will be constructed and used for the site-specific project including onshore and support facilities and all anticipated project easements. The COP must also describe all proposed activities including proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities. A GAP describes the proposed activities for the assessment and development of a limited lease or grant including, if applicable, a project easement. Such activities include: (1) physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); (2) resource assessment surveys (e.g., meteorological and oceanographic data collection); (3) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and (4) construction, activities, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities, that will be constructed and used for a project, including any project easements.

The MMS must approve the SAP, COP, or GAP before activities can begin on a lease or grant. The provisions define when NEPA analysis is required as well as CZMA requirements. A plan will not be approved without an appropriate environmental analysis. The provisions also describe the information requirements that must be submitted to assist MMS in the preparation of a NEPA analysis. Cable and pipeline deviations are also addressed.

Subpart G addresses the facility design, fabrication, and installation. The reporting requirements for each plan are described. The subpart addresses the need for a Certified Verification Agent (CVA) and the responsibilities of the CVA. The CVA must: (1) ensure that the facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report; and (2) ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA is directly responsible for providing to MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

Subpart H addresses environmental and safety management, inspections, and facility assessments. Specific provisions are given to define how to comply with environmental requirements; protect threatened, endangered and protected species; protect archaeological resources; and protect essential fish habitat. Additionally, a provision addresses the requirements for meeting applicable federal and State air quality standards during construction. For operations, provisions address safety management systems, maintenance and shutdowns, equipment failures and adverse environmental effects, inspections and assessments, and incident reporting and investigations.

Subpart I addresses decommissioning of a facility, including any associated cable or pipeline. The provisions require the removal of the facility at the end of operations. Within 1 year following termination of a lease or grant, the lessee must: (1) remove or decommission all facilities, projects, cables, pipelines, and obstructions; and (2) clear the seafloor of all obstructions created by activities on the lease, including the project easement, or grant, as required by the MMS. Before decommissioning, the lessee must submit a decommissioning application and receive approval from the MMS. The decommissioning application will undergo appropriate environmental reviews. During the decommissioning process, if any archaeological resource is encountered, the lessee must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to MMS. After removal, a decommissioning report must be submitted.

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

### **3 ALTERNATIVES TO THE PROPOSED ACTION**

For all alternatives discussed below, the activities that would be authorized for alternative energy and alternate use of existing structures are the same as those described in the Programmatic EIS, unless otherwise specified. As required by 40 CFR 1508.9(b) and Section 102(2)(E) of the NEPA, an EA shall include brief discussions of alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. The following are alternatives that MMS considered during the preparation of the regulations.



### **3.1 Regulatory Program With Area Identification by MMS And Fixed Term for Alternate Use**

The regulations would establish a 3- year planning cycle during which limited strategic areas are selected where commercial leases for alternative energy projects would be offered. This alternative was suggested by the Ocean Renewable Energy Coalition in the comments submitted for the Advance Notice of Proposed Rulemaking. Each 3- year cycle would be initiated with the identification of areas to be offered by MMS, followed by competitive leasing and environmental analysis of the site-specific projects offered, and the cycle would end with the issuance of leases. The MMS would identify those areas to be offered for lease rather than relying on industry to identify the areas. For alternative energy development projects, only areas identified by MMS as having adequate energy resources, appropriate water depth, proximity to a load center, and minimal environmental impact would be offered. The specific localities would be determined in coordination with the affected States and would be subject to adequate interest by industry. Each area identified would be evaluated through the NEPA process, and specific locations within the area could be identified as unacceptable for development. The defined areas available for leasing would then be offered for commercial leasing following the process defined in the regulations. The planning process would also identify reasonable corridors for the transmission cable. The planning process would include the terms and conditions to be incorporated into the leases and RUE's for operation. Leases would be initiated at the end of each three year cycle. The operator would be responsible for obtaining all permits and provide a financial guarantee for decommissioning and restoring the site to its original condition, as provided in the proposed regulations. Project-specific NEPA documents would still be required.

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

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

### **3.2 No Action Alternative**

Under the no action alternative, regulations would not be developed, and the MMS would not authorize alternative energy and alternate use activities on the OCS through the issuance of a lease, RUE, or ROW.

### **3.3 Alternatives Considered but Eliminated from Detailed Analysis**

Three alternatives were considered but eliminated from detailed analysis in the Programmatic EIS. The *first alternative* considered issuance of regulations specific to energy source (i.e., wind, wave, and ocean current), which would focus the regulations on individual energy

resources. The issuance of regulations on a resource-specific basis was determined to be an inefficient approach because of the commonalities among the potential alternative energy technologies and the issues that must be addressed. A *second alternative* considered identifying and analyzing specific areas in Federal waters along the coast with the greatest resource potential. The MMS would develop comprehensive formal regulations that delineated procedures for determining those areas on the OCS and offering a lease, RUE, or ROW. However, in the early stages of program development, the MMS considered it important to leave the OCS open for possible development because of a lack of requisite information to identify the best areas for alternative energy project activity and, therefore, determined that this alternative was impractical. A *third alternative* considered establishing a regulatory program that granted access rights through a lease, easement, or ROW, but did not regulate activities. The MMS did not analyze this alternative because the MMS believes that the impacts would be greater under this alternative than under the proposed action where comprehensive rules would be in place to oversee activities from site characterization through decommissioning.

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

### **3.3.1 Limited regulations with comprehensive guidelines**

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

### **3.3.2 Incorporate regulations for alternative energy and alternate use into existing oil and gas regulations**

New specific regulations for alternative energy and alternate use would be spread throughout the existing oil and gas regulations. For example, plan requirements would be in 30 CFR Part 250 Subpart B while decommissioning requirements would be in 30 CFR Part 250 Subpart Q. Environmental protection would be incorporated into 30 CFR Part 250 Subpart C. This process would require a complete rewrite and reissuance of all of MMS's regulations. Procedures for issuing a lease, easement, or RUE would be analogous to the process used for oil and gas, including a call for nominations, a notice of intent, an areawide lease sale, and regulation of subsequent activities in a similar process as is currently used. Transmission lines would be regulated in a similar manner as pipelines. The MMS already has extensive regulations for the offshore oil and gas industry. Incorporating regulations for alternative energy and

alternate use into the existing regulations would require the reissuance of all of the regulations, create the possibility of confusion because of the mixing of very different activities, and result in cumbersome oversight because the regulations would be spread throughout an already complex set of regulations; therefore, this alternative is considered impractical.

### **3.3.3 Provide regulations that are detailed and prescriptive**

The MMS would issue detailed and prescriptive regulations incorporating precise operating conditions for offshore operators of alternative energy and alternate use projects. The standards would be derived from existing standards used in other countries such as Denmark and Great Britain. The regulations would be technology specific, since the technical requirements are different for each technology. Since there is more information available concerning wind energy development and operation, the MMS would focus initially on preparing prescriptive regulations for the operation of this type of facility. The detailed regulations would include engineering specifications and operation requirements as well as construction and decommissioning requirements describing the best practices procedures for installation and removal. The engineering designs would be limited to currently operating technologies where details are available. While detailed and prescriptive regulations would enhance clear communication of expectations to industry and be readily enforceable, creation of meaningful requirements at this time would be impossible due to the availability of minimal information as to the best criteria for U.S. Federal waters. For wave and ocean current technologies, the most effective and efficient designs have not yet been identified by industry, thus making any prescriptive criteria impossible to identify; therefore, this alternative is considered infeasible.

## **4 SUMMARY OF IMPACTS**

In the Programmatic EIS (USDOJ, MMS, 2007), the proposed action is the establishment by the MMS of a nationwide, comprehensive Alternative Energy and Alternate Use Program on the OCS through rulemaking. A case-by-case alternative and the no action alternative were also analyzed. A comparison of impacts discussed in the Programmatic EIS is provided in Table 3 of this EA for wind, wave, and ocean current projects.

Impacts from alternate use of existing oil and gas platforms include fisheries enhancement and economic benefits to both platform operators and government agencies involved in natural resource protection. Platform removal is costly. Removal costs can be reduced by finding alternate uses for platforms. As discussed in Chapter 6 of the Programmatic EIS, removal of a platform structure from the OCS would result in destruction of the ecological system developed around the invertebrate species and plant life that envelop a platform's structure after emplacement. This ecological system includes smaller fish feeding on plant life up to other marine life, including mammals and predator fish feeding off the smaller fish species, resulting in enhanced recreational and commercial fishing opportunities. With proper implementation, alternate uses of oil and gas platforms are expected to result in negligible to minor impacts. Some potential alternate uses of existing oil and gas platforms include alternative energy, research and monitoring, and aquaculture.

## 4.1 Scope of the Programmatic EIS

The proposed action analyzed in the Programmatic EIS is the establishment of a comprehensive, nationwide MMS Alternative Energy and Alternate Use Program through rulemaking which includes the management of activities conducted on a lease, easement, or ROW on the OCS; issuance of guidance, policies, and best management practices; acquisition of baseline information through the conduct of environmental studies; and establishment of consultation mechanisms with affected States and Federal Agencies. The Programmatic EIS evaluated the generic impacts from potential activities occurring in the environment resulting from the establishment of the program. The Programmatic EIS informed MMS generally about the types and extent of environmental effects that could result from future authorizations by identifying the potential impact-producing factors and the key resources that could be impacted. Because the EIS evaluated future activities without the full benefit of specific information, any future proposal for an alternative energy project on the OCS under this new authority will be subject to its own project-specific environmental analyses under NEPA.

The Programmatic EIS is focused on alternative energy technologies and areas on the OCS about which industry has expressed a potential interest and ability to develop or evaluate from 2007 to 2014. The Federal OCS begins approximately 5.6 to 17 kilometers (km) (3 to 9 nautical miles [nmi]) off coastal shorelines and extends to about 370 km (200 nmi) offshore, with depths ranging from a few meters to thousands of meters. This area of the OCS includes about 6.96 million km<sup>2</sup> (1.72 billion acres); however, for wind and wave technologies being assessed within the timeframe of this EIS, development is expected to occur near to shore with maximum water depths of 100 meters (m) (328 feet [ft]). For ocean current technology, the evaluation included an area bounded by a water depth of 500 m (1640 ft) and focused on the OCS adjacent to Florida, Georgia, and South Carolina where development is most likely to occur in the near future.

The MMS management of the OCS is divided into four areas: Atlantic, Gulf of Mexico, Pacific, and Alaska. The Atlantic region covers the offshore area from Maine southward to the Straits of Florida; the Gulf of Mexico region includes the area off the western coast of Florida to Texas; the Pacific region follows the coasts of California, Oregon, and Washington; and the Alaska region covers the offshore areas of Alaska. Hawaii is considered separately from these four regions. Development of alternative energy resources around Hawaii is not considered in the Programmatic EIS because of the steep drop-off of the OCS in Federal waters beyond the 5.6 km (3 nmi) State boundary, where depths easily exceed 100 m (328 ft) in most areas. Furthermore, the boundaries of the NOAA Hawaiian Islands Humpback Whale National Marine Sanctuary encompass the few areas in Hawaii where Federal waters are less than 100 m (328 ft). In accordance with Section 8(p)(10) of the OCSLA as amended by section 388(a)(10) of the EPAct, any area on the OCS within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument, is excluded from consideration for development in this program. Development of alternative energy resources on the OCS in the Alaska region is also not considered in the EIS because of the relatively harsh environment and probability that potential projects will first be evaluated within State waters within the timeframe of the analysis. Any

proposals from Alaska within Federal OCS waters would be subject to individual NEPA analyses.

The technologies which may be developed on the OCS in the near term are described in Chapter 3 of the Programmatic EIS. The affected environment for the Atlantic, Gulf of Mexico, and Pacific are described in Sections 4.2, 4.3, and 4.4, respectively. The potential impacts of alternative energy development on the OCS are described for wind, wave, and ocean current technologies in Sections 5.2, 5.3, and 5.4, respectively. Cumulative impacts from the potential activities area discussed in Chapter 7.

A summary of the impacts from the proposed action and the no action alternative are presented in Table 3 of this EA.

Table 3. Summary of Impacts for Alternative Energy Projects from the Programmatic EIS

<b>Technical Area</b>	<b>Proposed Action</b>	<b>No Action</b>
Ocean surface and sediments	<p>Impacts from scouring around structures would be negligible to minor with respect to unique geologic features, acceleration of erosion, and alteration of topography. To avoid sediment transport problems in areas where loss of beach sand is a concern, site further offshore. Hazards posed by seafloor instability, with possible damage to foundations or cables.</p> <p><u>Mitigation measures include:</u> possible siting away from known areas of geologic instability and/or allowing slack in cable systems. Scouring could be mitigated through use of scour protection devices.</p>	No impacts
Air quality	<p>Minor impacts during testing, site characterization, operation, and decommissioning. Minor to moderate site-specific impacts from onshore and offshore construction activities due to emissions of criteria pollutants from internal combustion engines in vehicles, vessels, and equipment, and short-term fugitive dust emissions from earthmoving and vehicle traffic.</p> <p><u>Mitigation measures include:</u> meeting permitting requirements; standard dust control practices; and vessel, vehicle, and equipment emission and fuel-type controls.</p>	Impacts from onshore substitutes for electricity generation. Loss of benefit of technology that does not produce air emissions.
Ocean currents and movements	<p>Wind: Negligible and temporary impacts outside immediate vicinity of wind facilities.</p> <p>Wave: Reduction in wave height and energy could be observed within 2 km (1.2 mi) of a facility; no measurable onshore impacts because facilities would be farther than 2 km (1.2 mi) offshore.</p> <p>Current: For larger facilities (i.e., those causing a decrease in ocean current energy of more than 4% and producing more than 1,000 megawatts of power), possible adverse impacts to regional climate and ecology. This level of development is not expected over the next 5 to 7 years.</p> <p><u>Mitigation measures include:</u> possible maximizing the efficiency of extraction systems or limiting the quantity of energy extracted.</p>	No impacts

Technical Area	Proposed Action	No Action
Water quality	<p>Wind: Possible minor impacts from small spills of fuel, lubricants, solvents, etc., and resuspension of sediments during construction/operation/decommissioning (especially if facility is located in area with contaminated sediments). Negligible impacts from use of antifouling coatings if used according to regulations. Moderate to major impacts if oil spills result from collisions with facility structures.</p> <p><u>Mitigation measures include:</u> use of environmentally friendly chemicals (e.g., drilling fluids, antifouling coatings); adherence to spill prevention, control, and countermeasure plans; creation of exclusion zones for commercial and/or recreational vessels; and siting away from contaminated areas.</p> <p>Wave: Same as for wind energy, except that pile driving or drilling would be much more limited so that impacts from sediment resuspension and use of drilling fluids would be lower.</p> <p>Current: Same as for wind energy (some technologies would require driving or drilling of monopiles; others would not).</p>	Impacts from onshore substitutes for electricity generation to freshwater environments.
Acoustic environment	<p>Wind: Construction and decommissioning could generate high-intensity noise (e.g., from pile driving or drilling, laying cable in bedrock, removal of pilings with explosives), causing minor to moderate impacts to aquatic biota.</p> <p><u>Mitigation measures include:</u> reducing sound emissions using bubble curtains or insulated piles can decrease impacts. Operational noise impacts depend on distance from receptors and are expected to be minor.</p> <p>Wave: Construction and decommissioning could generate high-intensity noise (e.g., from laying cable in bedrock), although pile driving or drilling and removal would be more limited than for wind energy. Highest level of operational noise expected from terminators, however, impacts remain minor. Attenuators and point absorbers would generate noise similar to boats of similar size—minor impacts.</p> <p>Current: Construction and decommissioning could generate high-intensity noise (e.g., from pile driving or drilling, laying cable in bedrock, removal of pilings with explosives). Low operational noise levels; minor impacts.</p>	No impacts
Hazardous materials and waste management	<p>Minor to moderate impacts from spills during testing, site characterization, construction, operation, and decommissioning.</p> <p><u>Mitigation measures include:</u> development of hazardous materials and waste management plans; development of spill prevention and response plans; use of environmentally friendly chemicals where feasible; and consultation to ensure that facilities are not sited in the immediate vicinity of chemical weapons disposal areas.</p>	Hazardous materials and waste would be present at facilities generating alternate uses of electricity.

Technical Area	Proposed Action	No Action
Electromagnetic fields	Negligible to minor impacts to human health or marine organisms.	No impacts
Marine mammals	<p>Wind: Potential moderate to major impacts to some threatened and endangered species (e.g., North Atlantic right whale) from pile driving or drilling noise, facility avoidance, and from physical injury from vessel strikes. Moderate impacts from operational noise, especially for mammals with feeding/mating areas or migratory routes intersected by facility.</p> <p>Wave: Types of impacts similar to those identified for wind energy, although acoustic impacts are less because pile driving or drilling is limited. Possible moderate to major impacts to some threatened and endangered species from collisions with or entanglement in moorings.</p> <p>Current: Same as for wind energy, except more potential moderate to major impacts from turbine strikes or entanglement with moorings. Potential mitigation through siting, use of design features or management measures, and use of sonic pingers.</p> <p><u>Mitigation measures include:</u> avoidance of mating, feeding, and calving areas and of migration routes; ceasing construction work when mammals are nearby; and cutting pilings rather than using explosives during decommissioning.</p>	No impacts
Marine and coastal birds	<p>Wind: Minor to moderate impacts from onshore construction of facilities and cable landfalls. Negligible to moderate impacts from offshore construction depending on the habitats and birds affected. Minor to potentially major impacts due to turbine collisions for some threatened and endangered species of marine and coastal birds.</p> <p><u>Mitigation measures include:</u> siting to avoid important bird abundance, feeding, nesting, and wintering areas; timing of major noise-generating activities to avoid nesting periods; reduction or cessation of operations of turbines in migration paths during peak migration periods; and use of antiperching devices.</p> <p>Wave: Same as for wind energy, but bird strike risk is removed, except possibly for some diving birds (e.g., pelicans and terns) that could collide with structures or mooring lines.</p> <p>Current: Same as for wind energy, but bird strike risk is removed, except possibly for some diving birds and for short periods when structures are raised from the water for maintenance.</p>	No impacts

Technical Area	Proposed Action	No Action
Terrestrial biota	<p>Wind: Negligible to moderate impacts during construction of facilities and cable landfalls, and during operation of onshore facilities. Minor to moderate impacts to migrating bats and terrestrial birds from turbine collisions.</p> <p><u>Mitigation measures include:</u> avoidance of siting onshore facilities in sensitive areas; timing activities to avoid nesting periods; and coordination with USFWS.</p> <p>Wave: Same as for wind energy, except no impacts for migratory birds and bats.</p> <p>Current: Same as for wind energy, except no impacts for migratory birds and bats.</p>	Impacts to terrestrial biota from electrical generation from a land-based facility.
Fish resources and EFH	<p>Wind: Negligible to moderate impacts during construction, operation, and decommissioning (most notably from noise from pile driving or drilling and/or removal of structures using explosives). Population-level effects considered unlikely for most fish and shellfish species.</p> <p><u>Mitigation measures include:</u> avoidance of sensitive fish habitats, cutting pilings rather than using explosives during decommissioning, deterring fish from the area prior to pile driving, decreasing sound emissions, and development of hazardous materials and waste management plans.</p> <p>Wave: Same as for wind energy, although acoustic impacts are less because pile driving or drilling is limited. Possible localized impacts on populations for some species from entrainment in wave energy conversion devices, depending on their design.</p> <p>Current: Same as for wind energy, although acoustic impacts are less because pile driving or drilling is limited.</p>	Impacts from some sources of electrical generation such as from use of cooling water.



Technical Area	Proposed Action	No Action
Sea turtles	<p>Wind: Minor to moderate impacts during testing, site characterization, construction, operation, and decommissioning (most notably from noise from pile driving or drilling, disorientation of hatchlings from onshore lighting, removal of structures using explosives, vessel collisions, and onshore construction). Possible major impacts if nests or aggregates of hatchlings are destroyed. Impacts from operational noise (wind turbines) unknown.</p> <p><u>Mitigation measures include:</u> avoidance of onshore nesting areas, ceasing construction work when turtles are within the area, and limiting types and size of explosives used. Assuming mitigation measures are employed, population-level impacts would not be expected.</p> <p>Wave: Same as for wind energy; additional adverse impacts from entrainment in overtopping devices, impediment of movement by terminators and overtopping devices, and entanglement in moorings.</p> <p><u>Mitigation measures include:</u> avoiding use of overtopping devices in areas of passive hatchling aggregation and development and use of turtle exclusion devices.</p> <p>Current: Same as for wind energy; additional moderate adverse impacts from rotor collisions and/or entanglement in moorings, particularly for facilities located between nesting beaches and offshore turtle staging areas.</p> <p><u>Mitigation measures include:</u> development and use of turtle exclusion devices.</p>	No impacts.
Coastal habitats	<p>Negligible to moderate impacts during site characterization, construction, operation, and decommissioning from vessel traffic-generating waves, accidental fuel spills, dredging, cable-installation, and onshore construction resulting in habitat fragmentation, altered hydrology, loss of barrier beach habitat, and loss of wetlands and marshes.</p> <p><u>Mitigation measures include:</u> reduced vessel speeds near barrier islands, use of low-impact spill cleanup methods if necessary, avoidance of sensitive coastal habitats (particularly seagrass beds), use of best management practices for erosion and sedimentation control, application of dredged material to marshes, and use of nonintrusive construction techniques.</p>	Possible impacts depending on the location of facility that generates electricity.
Seafloor habitats	<p>Negligible to minor impacts during testing, site characterization, construction, operation, and decommissioning (most notably from noise from pile driving or drilling, and/or removal of structures using explosives, placement of meteorological towers, and electromagnetic fields around cables). Potentially major impact to benthic communities from installing facilities on uncommon or sensitive habitat.</p> <p><u>Mitigation measures include:</u> avoidance of sensitive seafloor habitats, minimizing seafloor disturbance, avoiding use of explosives, and shielding of cables. Assuming mitigation measures are employed, population-level impacts would not be expected.</p>	No impacts.

Technical Area	Proposed Action	No Action
Areas of special concern	<p>Wind: Site-specific impacts depend on locations of facilities. Minor to moderate impacts to visual resources if wind towers are visible from coastal parks. Impacts from fuel spills, noise, and construction expected to be minimal assuming that facilities would not be sited in the immediate vicinity of offshore marine protected areas.</p> <p>Wave: Same as for wind energy, except potential impacts to visual resources are minor.</p> <p>Current: Same as for wind energy, except potential impacts to visual resources are negligible.</p>	No impacts.
Military use areas	Negligible to minor impacts during testing, site characterization, construction, operation, and decommissioning, assuming siting of facilities is coordinated with the USDOD.	Possible impacts from land-based facility.
Transportation	<p>Wind: Negligible to minor construction impacts because individual units would be installed sequentially. Negligible to minor impacts during operations; ports and harbors could accommodate additional volume without significant upgrades.</p> <p><u>Mitigation measures include:</u> signage and/or lighting for potential marine navigation and aviation hazards due to large height of towers; also siting away from significant flight paths.</p> <p>Wave: Same as for wind energy, except no aviation hazards are expected.</p> <p>Current: Same as for wind energy, except no aviation hazards are expected.</p>	Impacts to land-based transportation.
Socioeconomic resources	Site-specific impacts depend on size of population in area where facility is sited. However, direct and indirect impacts on employment would likely be minor, especially in mid-sized populations or densely populated coastal locations typical of the study areas. Site-specific sociocultural impacts unknown; could range from negligible to moderate. Environmental justice impacts are site-specific and would be assessed for specific projects.	Impacts from land-based facilities to local communities.
Cultural resources	<p>Site-specific potential negligible to moderate impacts associated with disturbance of sites; surveys would be required in areas with potential to contain intact cultural resources.</p> <p><u>Mitigation measures include:</u> avoidance of locations with high potential for shipwrecks or submerged prehistoric sites, based on survey data.</p>	Potential impacts from land-based facilities that could damage cultural resources.
Land use and existing infrastructure	<p>Negligible to minor impacts during testing, site characterization, construction, operation, and decommissioning, assuming existing uses and proposed plans are identified during siting and public concerns are considered. Onshore construction impacts expected to be negligible. Commercial shipping would be excluded within the facilities, but other uses (e.g., recreation, fishing) would be possible.</p> <p>Wave: Same as for wind energy, except that the density of the wave energy conversion units might make the entire surface area of the facility unavailable for other uses.</p>	Potential impacts from land-based facilities.

Technical Area	Proposed Action	No Action
Visual resources	<p>Site-specific positive or negative impacts dependent on viewers.</p> <p><u>Mitigation measures include:</u> siting away from sensitive areas.</p> <p>Wave: Site-specific negligible to minor impacts due to low height of structures.</p> <p>Current: Site-specific negligible impacts due to low height of structures.</p>	Potential impacts from land based facilities.
Tourism and recreation	<p>Minor impacts during testing, site characterization, construction, operation, and decommissioning for beach recreation, sightseeing, diving, and recreational fishing; site-specific visual impacts due to height of structures.</p> <p><u>Mitigation measures include:</u> siting away from sensitive areas.</p> <p>Wave: Site-specific negligible impacts due to low height of structures and minor impacts due to presence of structures.</p> <p>Current: Site-specific negligible to minor impacts due to low height of structures and minor impacts due to presence of structures.</p>	Potential impacts from land based facilities.
Fisheries	<p>Site-specific potential negligible to moderate impacts due to decreased catchability, decreased access to fishing areas, and damage or loss of equipment or vessels.</p> <p><u>Mitigation measures include:</u> avoidance of high-use fishing areas, review of plans with potentially affected fishing organizations and port authorities, conducting noise-generating activities during closed fishing periods, and sufficient lighting of facility structures.</p>	No impacts to marine fisheries.
Nonroutine conditions	<p>Possible occupational injuries or fatalities, particularly from working at heights and working over water. Relatively low potential number of human casualties from collisions, natural events, or sabotage/terrorism. Site-specific potential moderate to major impacts to marine resources from large spills due to collisions, natural events, or sabotage/terrorism.</p> <p><u>Mitigation measures include:</u> use of navigational aids, adherence to U.S. Coast Guard-approved plans, and adherence to spill prevention and response plans.</p>	Potential impacts from land-based facilities.

## **4.2 Record of Decision and Preferred Alternative for the Programmatic EIS**

A Record of Decision formally establishing the Alternative Energy and Alternate Use Program was issued January 10, 2008. The decision selected a blended alternative that incorporated the proposed action and the case-by-case alternative discussed in Sections 2 and 3 of this EA. A set of interim policies and best management practices were also adopted. The Record of Decision is available on the MMS website at: <http://ocsenergy.anl.gov>.

The combination of the proposed action and the case-by-case alternative limits possible impacts associated with further delay in tapping the energy potential of alternative energy projects on the Federal OCS by allowing applications to be approved by the MMS before full implementation of the final regulations, but keeps the MMS on course for a comprehensive program governed by regulations. Leases, RUE's, and ROW's issued under the preferred alternative prior to the completion of rulemaking would be subject to project-specific NEPA analyses and would include terms, conditions, and stipulations to ensure safe and environmentally responsible operations on the OCS in a manner consistent with the provisions of the final implementing regulations.

## **4.3 Analysis of the Proposed Action and Alternatives**

### **4.3.1 Analysis of the proposed action**

The proposed action analyzed in this EA is the promulgation of the proposed regulations for the MMS Alternative Energy and Alternate Use Program on the Federal OCS. A detailed description of the proposed action was presented in Section 2.5 of this EA.

While much of the proposed regulations address administrative responsibilities of both MMS and the lessee or grantee, which have no environmental impacts, some provisions directly or indirectly have potential environmental consequences. Provisions within each subpart that may have environmental implications are discussed here.

- Subpart A contains provisions for departure from the regulation, where MMS will consider a departure when it is needed to: facilitate the proper development of a lease or grant under this part; conserve natural resources; protect life (including human and wildlife), property, or the marine, coastal, or human environment; or protect sites, structures, or objects of historical or archaeological significance. These measures are protective of the environment. Subpart A also requires early notice of a bankruptcy allowing early intervention to ensure that the lessee or grantee does not abandon a facility.
- Subpart B includes consultation provisions, thus ensuring that State and local interests are taken into consideration, which could be protective of the environment.
- Subpart C is administrative with no impacts to the environment.

- Subpart D allows MMS to issue cessation orders if the lessee fails to comply with Federal laws and regulations, including environmental laws. The MMS reserves the right to suspend operations when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance. The MMS will not renew a lease for activities not authorized under the original lease, and the USDOJ Secretary may cancel a lease should activities cause serious harm or damage to natural resources. These provisions allow MMS to be protective of the environment should activities occurring on the lease be determined to cause harm.
- Subpart E requires bonding to ensure that a company will remove the facility once operations have ceased, thus preventing the abandonment of equipment in the ocean. As the lessee's activities increase on a lease, the bonding level is required to increase, again ensuring that the lessee or grantee has the financial ability to remove all facilities and equipment including cables or pipelines once a lease or grant has terminated.
- Subpart F require the lessee or grantee to prepare a site assessment plan to evaluate the area where the proposed activities will occur. The MMS will analyze the site assessment activities for their potential environmental impacts and identify appropriate mitigation measures. In addition, the site assessment will be used to identify potential archaeological sites and areas of biological sensitivity that should be avoided during construction or decommissioning. This will ensure protection of the local environment. The lessee or grantee will be required to prepare a construction and operations plan that will describe in detail the proposed activities at the location. The MMS will prepare a NEPA analysis based on the information provided by the lessee or operator to determine the environmental impacts of those activities, and appropriate mitigation and monitoring requirements will be established on a project-specific basis. The MMS recognizes the need for this determination at the project level because alternative energy technologies are rapidly evolving, thus making specific requirements for all projects impossible to determine at this point of promulgating regulations. A general activities plan will be required for activities, such as technology testing, which do not have a commercial component. The proposed regulations require that an appropriate environmental review be conducted by MMS prior to approval of the plan.
- Subpart G requires a Certified Verification Agent to oversee and ensure that the operator is building the facility according to the approved plan during construction and operations.
- Subpart H requires that the facility will be regularly inspected by MMS and must ensure that activities occurring on the lease comply with MMS regulations. Subpart H specifically identifies protection of threatened, endangered, and protected species; protection of archaeological resources; and air quality requirements during construction. These provisions allow for MMS to enforce protection of the environment in order to minimize the environmental impacts.

- Subpart I addresses the requirements for decommissioning. The environmental impacts of decommissioning will be addressed in the construction and operations plan, but provisions are given to require revisiting the decommissioning process at the time when it will occur to better assess the potential environmental impacts.
- Subpart J addresses the alternate use of existing facilities. The MMS will consider requests for an alternate use RUE on a case-by-case basis. In considering such requests, MMS will consult with relevant Federal Agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that: (1) ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; (2) does not inhibit or restrain orderly development of OCS mineral or energy resources; (3) avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance); (4) is otherwise consistent with subsection 8(p) of the OCSLA; and (5) allows MMS to effectively regulate. A separate NEPA analysis will be required for each project proposed.

There are no direct impacts to the environment from the proposed regulation, which describes administrative functions and the submittal of plans. However, while not specifically and directly incorporating detailed provisions that will reduce impacts to the environment, the proposed regulations require that appropriate environmental analyses be prepared at the time of the proposal of activities, this requirement will result in a better assessment of the potential impacts as well as development of mitigation measures and monitoring that would be most successful. The proposed regulations also provide provisions to allow oversight of activities, such as inspections, in order to minimize the environmental impacts. The review process that is defined in the proposed regulation should result in reduced cumulative effects because of the requirement that each project be evaluated when the activity is proposed.

Indirect impacts from the proposed action would include the potential activities that may be authorized after promulgation of the regulations. These activities are projected to occur on the Atlantic, Pacific, and Gulf coasts in the foreseeable future. A detailed description of the affected environment is incorporated by reference from Chapter 4 of the Programmatic EIS. The activities that may result from the promulgation of the regulations and their potential environmental impacts were described in Chapters 5 (alternative energy) and Chapter 6 (alternate use) of the Programmatic EIS. The impacts are also summarized in Table 3 of this EA. No new information has become available since the Record of Decision was issued in January 2008 that would alter the conclusions presented in the Programmatic EIS. The proposed regulations require that all proposed activities that could potentially result in environmental impacts undergo a site-specific NEPA analysis to determine the potential impacts and appropriate mitigation measures. This includes the preparation of NEPA documents prior to approval of site assessment plans, construction and operation plans, and general activity plans. In addition, prior to a lease sale within an area proposed for interest, a NEPA analysis will be required. In all cases, activities will not be permitted to occur until the MMS has taken a hard look at the potential environmental impacts. The proposed action described in this EA is expected to result

in the same or similar impacts as were described in the Programmatic EIA, and all analyses are therefore incorporated by reference. Cumulative impacts result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. At this time, the precise locations of potential new alternative energy facilities are unknown. When such facilities are proposed, the cumulative impacts will be assessed in the environmental reviews for the specific projects in relation to all other proposed projects in close proximity. The cumulative impacts were described in a generic manner in Section 7.6 of the Programmatic EIS. There is no new information available that would alter the cumulative analysis since publication of the Record of Decision in January 2008.

#### **4.3.2 Regulatory program with area identification by MMS and fixed term for alternate use**

A description of this alternative was given in section 3.1 of this EA. This alternative differs from the proposed action in that the MMS would identify areas for leasing rather than allowing industry to identify areas. Initial NEPA analyses would be used to identify environmentally sensitive subareas within the proposed lease area that could be removed as an area for leasing. The same types of alternative energy projects would be proposed under this alternative as for the proposed action. The areas where these activities are expected to occur in the foreseeable future are off the Atlantic, Pacific and Gulf of Mexico coasts. The process differs in that areas that are environmentally sensitive would not be offered for lease, thus apparently increasing the level of environmental protection. However, both the proposed action and this alternative would require subsequent site-specific NEPA documentation that would essentially result in the same level of protection through the identification of areas that should be avoided. The primary differences are in the timing of when the areas are identified and the burden of identifying the areas; i.e., in the proposed action, the developer is responsible for proposing the areas for lease with the risk that the area may later be determined to be environmentally sensitive and therefore development would not be allowed. This alternative, however, may result in delays in development while the Federal Government goes through the process of identifying the areas for development. The cumulative impacts are the same or similar as the proposed action and would be analyzed in detail as part of the NEPA analysis conducted for each site-specific proposal.

For alternate use of existing structures, this alternative differs from the proposed action in that the alternate uses would have a fixed duration RUE of 5 years rather than a duration determined on a case-by-case basis. The possible alternate use activities that may result from this alternative are the same as were described in Chapter 6 of the Programmatic EIS. The environmental impacts associated with these activities would be the same or similar to those described in the Programmatic EIS; however, the impacts may be reduced or minimized because the reevaluation of these activities every 5 years may result in the suspension of activities, should impacts to the environment be determined to be detrimental. The cumulative impacts from the proposed action were described in Section 7.3 of the Programmatic EIS and may be lessened under this alternative because the activities may be reassessed on a 5-year cycle.

#### 4.3.2 No action alternative

The impacts from the no action alternative are described in detail in the Programmatic EIS in Section 7.3 and summarized in this EA in Table 3.

### 5 CONSULTATION AND COORDINATION—SCOPING

The scoping process for this EA was formally initiated on February 26, 2008, with the *Federal Register* Notice announcing the preparation of an EA. In the Notice, MMS requested that interested parties submit comments regarding any information or issues that should be addressed in the EA. The comment period closed on March 26, 2008. Two comment letters were received, one from Food & Water Watch and one from the Hydropower Reform Coalition. The comment from Food and Water Watch offered new information about salmon farming and the potential impacts to wild salmon. Salmon farming, at this time, is not expected on the OCS. The MMS received many comments on the Programmatic EIS about the MMS's authority to regulate offshore aquaculture. To reiterate the response given in the Programmatic EIS, the MMS has no active role and is not seeking a primary role in regulating aquaculture activities. However, under the MMS's new "alternate use" authority provided under section 388 of EPAct (codified as subsection 8(p) of the OCSLA), the MMS may consider proposals to conduct aquaculture activities that involve the use of existing OCS oil and gas facilities, since there currently are no regulations governing this activity. The proposed rule emphasizes the need for coordination and consultation with NOAA and other relevant Federal Agencies before the MMS would consider approving any alternate use proposal involving aquaculture. The MMS is also aware of the National Offshore Aquaculture Bill currently being discussed by Congress that would make NOAA the lead agency for offshore aquaculture. Should the bill be enacted, the MMS looks forward to working closely with NOAA on any potential proposals that involve the use of existing structures.

In addition to MMS not seeking authority to oversee aquaculture, any proposal seriously considered by MMS would undergo a separate NEPA analysis and be conducted in close coordination with other Federal Agencies. Comments and questions from the Hydropower Reform Coalition were generally specific to the rule and procedures within the rule. Where appropriate, those comments were taken into consideration during the preparation of the EA, and MMS will also address those comments more directly as part of the rulemaking process.

During the preparation of the Programmatic EIS, the scoping process began on May 5, 2006, with 10 public scoping meetings held around the country. Nine public hearings were held for the Programmatic EIS, also in locations around the country. A description of the meetings and attendees can be found in Sections 1.3.1 and 1.4 of the Programmatic EIS. Comments and responses to the draft Programmatic EIS are published on the MMS website at <http://ocsenergy.anl.gov>.

The MMS published an Advance Notice of Proposed Rulemaking on December 30, 2005 (70 FR 77345). Comments received from the Notice were used in the preparation of the



proposed rule and were used as part of scoping for this EA. Details about the comments and MMS response to the comments are given in the preamble to the proposed rule.

## **6 REFERENCES**

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





### The Department of the Interior Mission

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



### The Minerals Management Service Mission

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

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

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