

What renewable energy activities on the OCS require authorization by MMS?

Under the OCS Lands Act, as amended by the Energy Policy Act of 2005 (EPAAct), activities on the OCS that “produce or support production, transportation, or transmission of energy sources other than oil and gas [43 U.S.C. 1337(p)(1)] are authorized by a lease, easement, or right-of-way issued by MMS. For the foreseeable future, MMS believes that such activities will be limited to the development of wind, ocean wave, and ocean current resources on the OCS for the purpose of generating electricity. For wind development activities MMS has authority for issuing leases and grants and for managing all activities on those leases and grants. For wave and current activities MMS has authority for issuing lease and grants, and the Federal Regulatory Energy Commission has authority for issuing licenses and exemptions regulating construction and operations on the leases and grants issued by MMS. Any activities relating to the development of wind, wave, and current resources—including resource assessment and technology testing activities—that entail the temporary or permanent attachment of a structure or device to the seabed generally require a lease, easement, or right-of-way issued by MMS. However, MMS will consider proposed renewable energy activities on a case-by-case basis to make a determination of what constitutes an “attachment to the seabed” and to decide whether a lease, easement, or right-of-way is required.

What about site characterization activities relating to renewable energy development on the OCS?

At this time MMS does not issue permits for preliminary site characterization activities (e.g., geological, geophysical, and archaeological surveys) that are conducted on unleased or ungranted areas of the OCS as it does for oil and gas and minerals under the authority of section 11 of the OCS Lands Act. However, if you are contemplating conducting such site characterization activities relating to OCS renewable energy development, we encourage you to first contact MMS to initiate proper consultation concerning applicable federal laws and authorities, as well as to ensure that the data you intend to acquire are consistent with MMS information requirements governing subsequent submissions relating to lease or grant issuance and plan approval.

Our February 10, 2009, statement on this issue indicated that geological and geophysical surveys may be conducted prior to the acquisition of an MMS lease or grant subject to verification by the U.S. Army Corps of Engineers (ACOE) Nationwide Permit or General Permit program or other appropriate authorization. The ACOE has since clarified its policy that it generally does not have jurisdiction over activities on the OCS, such as geological and geophysical surveys, that do not involve installation of structures or devices on the seabed. However, if you are considering survey activities on the OCS, you should still contact your local ACOE district office to ascertain whether ACOE authorizations may be necessary for your proposed activities.

Site characterization surveys that are conducted on a lease or grant will be authorized by MMS under the provisions of the lease or grant and applicable regulations.

What about installing measurement devices such as meteorological masts and acoustic Doppler current profilers?

As stated above, renewable energy resource assessment devices that are attached to the seabed generally require a lease issued by MMS. However, there may be circumstances under which such installations would not require a lease from MMS but instead would be subject to ACOE jurisdiction and may be covered under a Nationwide or other General Permit or other appropriate authorization. The MMS will consider proposals on a case-by-case basis to make a determination of what constitutes an “attachment to the seabed” and to decide whether a lease, easement, or right-of-way is required. If you are contemplating the installation of measurement devices relating to OCS renewable energy resources, we encourage first to contact MMS to enable us to determine whether a lease is required and to ensure that the data you intend to acquire are consistent with MMS information requirements governing subsequent submissions relating to lease or grant issuance and plan approval.

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