

**UNITED STATES OF AMERICA**  
**Before the**  
**MINERALS MANAGEMENT SERVICE**

**Request for Information and Nominations of )**  
**Areas for Leases Authorizing Alternative )**      **Alternative Energy and Alternate Use Program**  
**Energy Resource Assessment and Technology )**  
**Testing Activities Pursuant to Subsection )**  
**8(p) of the Outer Continental Shelf Lands Act)**

**COMMENTS OF THE NATIONAL HYDROPOWER ASSOCIATION**  
**ON THE NOVEMBER 6, 2007 NOTICE AND REQUEST FOR INFORMATION**

**I. BACKGROUND AND INTRODUCTION**

On November 6, 2007, the Minerals Management Service (“MMS” or the “Service”), as part of the development of the Service’s proposed Alternative Energy and Alternate Use Program (“AEAU”), issued a “Request for Information and Nominations of Areas for Leases Authorizing Energy Resource Assessment and Technology Testing Activities Pursuant to Subsection 8(p) of the Outer Continental Shelf Lands Act” (“Notice” or “Request”).<sup>1</sup>

The purpose of the Notice was to receive comments regarding the MMS’ authorization of activities on the Outer Continental Shelf (OCS) involving the installation of meteorological or marine data collection facilities to assess alternative energy resources (e.g., wave, ocean current, tidal and wind) or to test alternative energy technologies. The MMS intends to adopt an interim policy to authorize such activities as it continues finalizing its AEAU program, which is still under development.

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<sup>1</sup> 72 Fed. Reg. 62673 (Nov. 6, 2007).

The National Hydropower Association (“NHA”)<sup>2</sup> once again appreciates the opportunity to comment on the MMS program for the development of alternate energy technologies on the OCS. NHA has been closely monitoring the Service’s work on the AEAU program and provided comments on the “Advanced Notice of Proposed Rulemaking Regarding Alternate Energy-Related Uses on the Outer Continental Shelf” (RIN 101-AD30) and the issuance of the Draft Programmatic Environmental Impact Statement (“EIS”) in support of the proposed AEAU program.

New technologies offer the promise of expanding the nation’s base of clean, renewable energy. Ensuring that the regulatory process for these technologies is clear, flexible, and practical is a top concern for the association and its members. NHA strongly supports the MMS’ decision to move forward with an interim program of resource assessment and technology testing while the process for completing the AEAU regulations proceeds.

To date, investigation and development of OCS ocean energy resources has been handicapped and delayed due to the prolonged promulgation of the final rules for MMS AEAU regulatory program and to the uncertainty surrounding the regulatory regime because of the jurisdictional questions that have arisen with the Federal Energy Regulatory Commission (FERC). NHA recognizes that progress is being made and commends the Service on its recent issuance of the final programmatic EIS – an important step. However, NHA believes more needs to be done. Permitting developers to proceed with site investigation and technology testing activities, as the MMS proposes, will allow the industry to

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<sup>2</sup> NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including new water power technologies, such as ocean, tidal and instream hydrokinetic power. NHA’s membership consists of more than 140 organizations including; public utilities, investor owned utilities, independent power producers, developers, equipment manufacturers, environmental and engineering consultants and attorneys. NHA’s Ocean, Tidal and New Technologies Council has nearly 30 member companies, many of whom have new ocean, tidal and instream projects under development.

gain some momentum, move forward, and be better positioned to act quickly on projects once the MMS completes its work on the final regulations.

## **II. COMMENTS**

The following are general comments of the association on the proposed interim policy and the overall AEAU program. NHA leaves to its members who are the actual project developers to respond to the more specific information requests that seek details on particular lease applications and issues.

Interim Policy on Site Investigation and Technology Testing – As stated above, NHA reiterates its support for the proposed MMS interim policy, which the association has advocated since the issuance of the AEAU ANOPR. In its November conference call discussing the policy, MMS staff stated that the final AEAU program regulations would likely not be issued until December 2008, at the earliest. As a result, project developers are prevented from proceeding with an application for a project on the OCS for at least a year. This administrative delay is untenable for a nascent industry that needs access to sites to determine project viability, test equipment to ensure compatibility with local conditions, and also secure necessary financing.

The proposed interim policy is a step in the right direction. Several NHA members are currently examining potential ocean, tidal and instream hydrokinetic projects, both on and off the OCS. Their experience to date demonstrates the importance and need for robust site investigation and technology testing. For example, some members report finding higher power potentials in the field than was first estimated. Others report the need to test multiple technology applications to determine

the most efficient device within local site conditions. These research needs take time and their findings may necessitate a re-evaluation of the project's design. Allowing these activities to move forward now while the AEAU program continues to be finalized is important and provides the necessary signal of support from the federal government the industry needs.

While NHA supports the overall MMS interim policy, the association believes some modifications are needed. Again, on the November conference call, MMS staff stated that leases to investigate sites and test technologies would not vest developers with any right of priority to those sites for commercial development once the AEAU regulations are in place. In fact, a secondary leasing process would be held, which may result in the loss of the site.

NHA encourages the MMS to consider some mechanism by which developers who are granted leases for testing activities are also granted a form of priority to the site for commercial development purposes. As currently structured, the interim lease actually provides a disincentive for testing activities on OCS sites. Why should a developer take the financial risk and spend considerable time, effort and funds to investigate a site and develop a project tailored to it, only to potentially lose that site for commercial development?

While NHA would expect in most cases that the developer with an interim lease to an OCS site would submit the best application for a commercial lease, the process still sets up yet another layer of uncertainty and places additional unnecessary financial risk on the project. Again, for an emerging industry with companies that are actively looking for financing and capital, this additional risk is

unattractive to potential investors. NHA recommends that the MMS reconsider this aspect of the interim policy.

MMS staff also stated on the November call that project developers would not be allowed to connect to the grid and sell power under the proposed interim policy. NHA strongly encourages the Service to allow interim lease holders to sell power to generate revenue for the project. As stated earlier in these comments, the ocean energy industry is an emerging one. Many of the pioneer companies in this industry could use the revenue generated from selling power to subsidize the testing activities, as well as the additional studies, research and mitigation measures that will be required in support of commercial development.

In addition, these activities and projects under the interim policy will be minor in scope as should their potential impacts. As such, MMS should be able to craft leases in such a way as to monitor and address any impacts from testing activities that also allow selling of power. Again, NHA recommends that the MMS reconsider this aspect of the interim policy.

OCS Program Coordination – NHA believes, as stated in earlier filings, that the MMS regulatory program should provide a streamlined, coordinated process that minimizes duplication of effort by other federal agencies and the states. Of primary importance is the resolution of any potential conflicts of authority or jurisdiction over off-shore alternate energy projects, in particular that of MMS and FERC, which could pose complications to the efficient and orderly development of ocean energy technologies on the OCS. Recognizing this, the Service and FERC have engaged in a discussion for over a year working toward a Memorandum of Understanding (MOU) that would delineate the roles

and responsibilities of the agencies, both of which have an interest in the development of ocean energy OCS projects.

From the beginning, NHA has supported this cooperative effort believing that it will clarify jurisdiction and provide certainty for developers to achieve timely regulatory approvals. The MOU must be finalized as quickly as possible and implemented in order to demonstrate the federal government's commitment and support of these new technologies to developers, stakeholders, the financial community and the public at large.

Ocean and tidal power technologies have an important role to play in meeting our country's goal of promoting new, clean, climate-friendly energy resources. Various studies show that tremendous amounts of potential exist from these energy resources, and these are just preliminary conservative estimates. Ensuring that an appropriate regulatory process is in place for these technologies is crucial if this potential is to be realized.

### **III. CONCLUSION**

Once again, NHA commends the Service for its work in issuing the final programmatic EIS in support of its AEAU program and appreciates the opportunity to comment on the interim policy for site investigation and technology testing. The interim policy is a critical component to ensure the advancement of the new water power technologies, to build the same momentum as is seen with project proposals and development on non-OCS lands. The association looks forward to further discussions with MMS staff in the future on its implementation, including a re-examination of the decisions with regard to priority to sites and allowing the sale of power to the grid.

NHA also encourages the Service to finalize the AEAU regulations and to adopt and implement the MOU with FERC in as timely a manner as possible so as to remove the regulatory uncertainty and administrative delays that hamper the development of this new renewable industry.

The association remains committed to participating in any further MMS efforts to ensure the success of ocean and tidal technologies as an integral part of the Nation's energy policy.

Respectfully submitted,

NATIONAL HYDROPOWER  
ASSOCIATION

By



Linda Church Ciocci  
Executive Director  
National Hydropower Association  
One Massachusetts Ave., N.W.  
Washington, D.C. 20001  
(202) 682-1700 x.22