

February 10, 2009

What alternative 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. Thus, activities relating to the development of wind, wave, and ocean current resources—including resource assessment and technology testing activities—that entail the temporary or permanent attachment of a device to the seabed- generally require a lease, easement, or right-of-way issued by MMS. However, MMS will make a determination of what constitutes an “attachment to the seabed” on a case-by-case basis and whether a lease, easement or right-of-way is required. If you are contemplating conducting any alternative energy activities on the OCS, we strongly encourage you first to contact MMS.

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

The EPAAct does not provide authority to the MMS to issue separate permits for certain preliminary site characterization activities (e.g., geophysical, geological, and archaeological surveys) related to the development of alternative energy on the OCS as the OCS Lands Act does for oil and gas and marine minerals. The U.S. Army Corps of Engineers (ACOE) may authorize “survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resource surveys” under its Nationwide Permit 6 [72 *Federal Register* 11182] or other type of General Permit authorization. Other types of surveys may require a specific federal authorization and must be conducted in accordance with applicable law. If you are contemplating conducting site characterization activities relating to OCS alternative energy development, we encourage you first to contact MMS 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.

Geologic and geophysical surveys may be conducted prior to the acquisition of an MMS lease subject to ACOE verification under the Nationwide Permit or General Permit program or other appropriate authorization. However, MMS strongly encourages applicants to coordinate any pre- or post-lease survey activities with MMS and the ACOE prior to their conduct to ensure that the activities being proposed meet the conditions of any Nationwide Permit or General Permit and the technical requirements of MMS. Depending on the type of Nationwide Permit involved, an applicant may be required to notify ACOE and receive verification that an activity is covered prior to start of the activity.

What about installing measurement devices such as meteorological towers and acoustic doppler current profilers?

As stated above, such alternative 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 make a determination of what constitutes an "attachment to the seabed" on a case-by-case basis and whether a lease, easement or right-of-way is required. If you are contemplating the installation of measurement devices relating to OCS alternative energy resources, we encourage you 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.