

**BEFORE THE UNITED STATES DEPARTMENT OF INTERIOR
MINERALS MANAGEMENT SERVICE**

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Environmental Assessment for the Alternative Energy)
And Alternate Use Proposed Rule)

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COMMENTS OF THE HYDROPOWER REFORM COALITON

The Hydropower Reform Coalition (HRC) submits these comments in response to the “Notice of Preparation of An Environmental Assessment for the Alternative Energy and Alternate Use Proposed Rule,” 73 Fed. Reg. 10284 (Feb. 26, 2008). Our comments focus on wave and current (hydrokinetic) projects.

The HRC is an association of 140 organizations representing more than one million conservationists, anglers, boaters, and homeowners in regulatory proceedings for non-federal hydropower projects. Formed in 1992, the HRC through its member organizations actively participates in most licensing proceedings for such projects on inland waters. It has also commented on the Federal Energy Regulatory Commission’s (FERC) several proceedings to develop new policies for regulation of hydrokinetic projects in inland and offshore waters.

The HRC supports MMS’ adoption of an Alternative Energy and Alternative Use (AEAU) program, as recommended in the *Programmatic Environmental Impact statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf* (PEIS) (Nov. 2007). We concur that hydrokinetic projects in the Outer Continental Shelf (OCS) should be regulated through generally applicable procedures, standards, and requirements specified by rule, rather than case-by-case. See PEIS, p. 2-6.

The Notice requests comments on the proposed rule to adopt the AEAU program. The HRC respectfully requests that the proposed rule describe the procedures, standards, and requirements which MMS will apply for compliance with the Administrative Procedures Act, National Environmental Policy Act, and other federal laws applicable to MMS’ decisions on OCS hydrokinetic projects.

1. Will the MMS establish and maintain a docket on each application for lease, right-of-use and easement, or right-of-way for an OCS hydrokinetic project? Will the docket contain all documents in the proceeding?

2. Will the docket be available for public review? If so, how? Will MMS use an on-line library, including list-serve capacity?
3. What will be the procedures and required form for filings in such a proceeding? What types of pleadings will be permitted?
4. What will be the required form of application for an OCS hydrokinetic project?
5. What will be the required content of such an application, including treatment of project finances, power transmission, and environmental impacts?
6. What studies will the applicant be required to undertake to understand local resource conditions?
7. How will MMS determine whether an application is complete and ready for processing?
8. How will MMS provide public notice of an application?
9. How will interested members of the public be permitted to participate in the proceeding on an application? Will interested members be permitted to become parties and, if so, on what basis?
10. What procedures will MMS follow to prepare an environmental document on an application?
11. How will MMS determine the environmental baseline for a given project?
12. How will MMS evaluate the development potential of an OCS area on for the purpose of addressing the cumulative impacts of a given project?
13. Are there any OCS areas, other than those listed in PEIS Section 2.1.3 (p. 2-3), where hydrokinetic development will not be permitted?
14. What will be the opportunities for public comment on the environmental document for a given application?

15. What procedures will MMS follow to respond to public comments on the environmental document for a given application?
16. In the preparation of the environmental document and otherwise, how will MMS coordinate with other federal and state agencies which have jurisdiction over any aspect of a project's construction, operation, and maintenance?
17. What is the status of efforts to resolve the dispute whether MMS has exclusive jurisdiction under the 2005 Energy Policy Act to regulate the construction, operation, and maintenance of OCS hydrokinetic projects, or in the alternative, whether FERC also has licensing jurisdiction under Federal Power Act Part I? At a minimum, how will MMS and FERC coordinate with respect to power transmission from an OCS project into the wholesale market regulated by FERC under Federal Power Act Part II?
18. What standards will MMS apply to determine whether a project will protect environmental quality?
19. What standards will MMS apply to determine whether to approve or disapprove an application?
20. What form of document will MMS use as its final decision on an application?
21. Will a final decision on a given application state mandatory requirements for design, construction, operation and maintenance, including conditions to protect environmental quality? If so, how will such requirements be enforced?
22. Will MMS require an approved project to monitor its impacts on environmental quality? If so, what type(s) of monitoring will be required?
23. What will be the minimum or maximum term of the permission for an OCS hydrokinetic project?
24. Will MMS require a project to be decommissioned at the end of its useful life? If so, will MMS require an applicant to provide a performance bond or other financial assurance to protect against the risk of abandonment?

25. Will an applicant or other interested parties be permitted to seek administrative rehearing of the final decision in a given proceeding?
26. Will an applicant or other interested parties be permitted to seek judicial review of the final decision?

Thank you for considering these comments.

Respectfully submitted,
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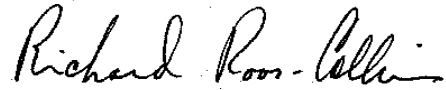
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