



Federal Permitting on the Outer Continental Shelf

Maine Wind Energy Conference

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Federal Waters

Outer Continental Shelf (OCS)

- 3 nautical miles to
- The seaward extent of federal jurisdiction (about 200 n.m. or more offshore)

Federal Jurisdictions

- Energy Policy Act – [BOEMRE](#) lease
- Clean Water Act (Section 404), Rivers and Harbors Act (Section 10) – [Army Corps](#) permits
- Ports and Waterways Safety Act; Maritime Transportation Act – [USCG](#)
- Clean Air Act – [USEPA](#), Conformity Determination
- Endangered Species Act (Section 7) – [NMFS](#) and [USFWS](#)
- Marine Mammal Protection Act – [NMFS](#) (in Maine)
- Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat) – [NMFS](#)
- Migratory Birds Treaty Act - [USFWS](#)
- Federal Aviation Act (out to 12 n.m.) – [FAA](#)
- Coastal Zone Management Act – [State](#) implementation
- National Historic Preservation Act (Sect. 106) – [State](#) implementation

Authority

- Energy Policy Act of 2005
 - Amended the OCS Lands Act
 - Authorized Dept. of the Interior (MMS, now BOEMRE) to issue leases for renewable energy development on the OCS
- No development for several years - Uncertainty about jurisdictional issues and the regulatory process that the Department would develop
- Regulations established April 2009 (30 CFR 285)

Streamlining

Questions remain about how BOEMRE will implement the new regulatory framework

- Specifically, 7+ year timeline for the permitting process because at least two NEPA reviews (EIS or EA) would be required for every project
- Therefore, Secretary of Interior Ken Salazar launched “Smart from the Start” wind energy initiative for the Atlantic OCS to accelerate the permitting process - *in the works*



Lease Types

Leases - 2 types

- **Commercial** – full development
 - 6-month preliminary term (competitive only)
 - 5-year site assessment term – meteorological or marine data collection
 - 25-year operations term
- **Limited** – resource assessment, technology testing
 - 6-month preliminary term (competitive only)
 - 5-year operations term



Grants

Also, three types of grant conveyances

- Right-of-Way (**ROW**) Grant – transmission of electricity
- Right-of-Use and Easement (**RUE**) Grant – facility that supports renewable energy projects
- Alternative Use RUE – project that uses existing facilities on the OCS

Interest in a Project

- Request for interest (RFI) - published in Federal Register to gauge interest
 - RFIs include off the coasts of MA, DE, MD
- Unsolicited request - interested party may request to develop a project
 - RFI then issued to determine if there is a competitive interest

Lease Issuance

Processes - 2 types – both involve public notice and NEPA analysis

- Competitive – default (call for information in Federal Register)
- Noncompetitive – if no competitive interest exists

Information Requirements

Commercial lease

- Site Assessment Plan (**SAP**) – within 6 mos. of lease issuance for a competitive lease (*or 60 days of finding of no competitive interest*)
 - planned site characterization activities and relevant baseline survey results (physical, resource, baseline environmental)
 - description of planned technology testing
 - information to comply with NEPA, ESA, CZMA, etc.
- Construction and Operations Plan (**COP**) – within 5 yrs. of SAP approval
 - construction, operations, and conceptual decommissioning plan
 - results of activities conducted under the SAP
- Facility Design Report
- Fabrication & Installation Report



Information Requirements

Limited lease

- General Activities Plan (**GAP**) – within 6 mos. of competitive lease issuance (*or 60 days of finding of no competitive interest*)
 - construction, operations, and conceptual decommissioning plan
 - technology testing
 - environmental/resource information similar to SAP

GAP also required for ROW or RUE grant



Information Requirements

- Hazard information
- Geological/geotechnical resources
- Water quality
- Biological resources
 - benthic communities
 - marine mammals
 - sea turtles
 - coastal and marine birds
 - fish and shellfish
 - plankton
 - seagrasses and plant life
 - barrier islands, beaches, dunes, wetlands
- Threatened or endangered species
- Sensitive biological resources or habitats
 - EFH
 - refuges
 - preserves
 - special management areas
 - sanctuaries
 - rookeries
 - hard bottom habitats
 - calving grounds
- Archaeological resources
 - prehistoric archaeological
 - historic
- Socioeconomic information
- Coastal and marine uses

NEPA Overview

National Environmental Policy Act (NEPA) of 1969

- Nation's basic charter for environmental protection
- Requires all federal agencies consider potential environmental impacts of their proposed actions
- Involves public

EA or EIS general content

- Purpose and need for action
- Proposed project and alternatives.
- Affected environment
- Environmental consequences
 - Includes cumulative effects



Environmental Review

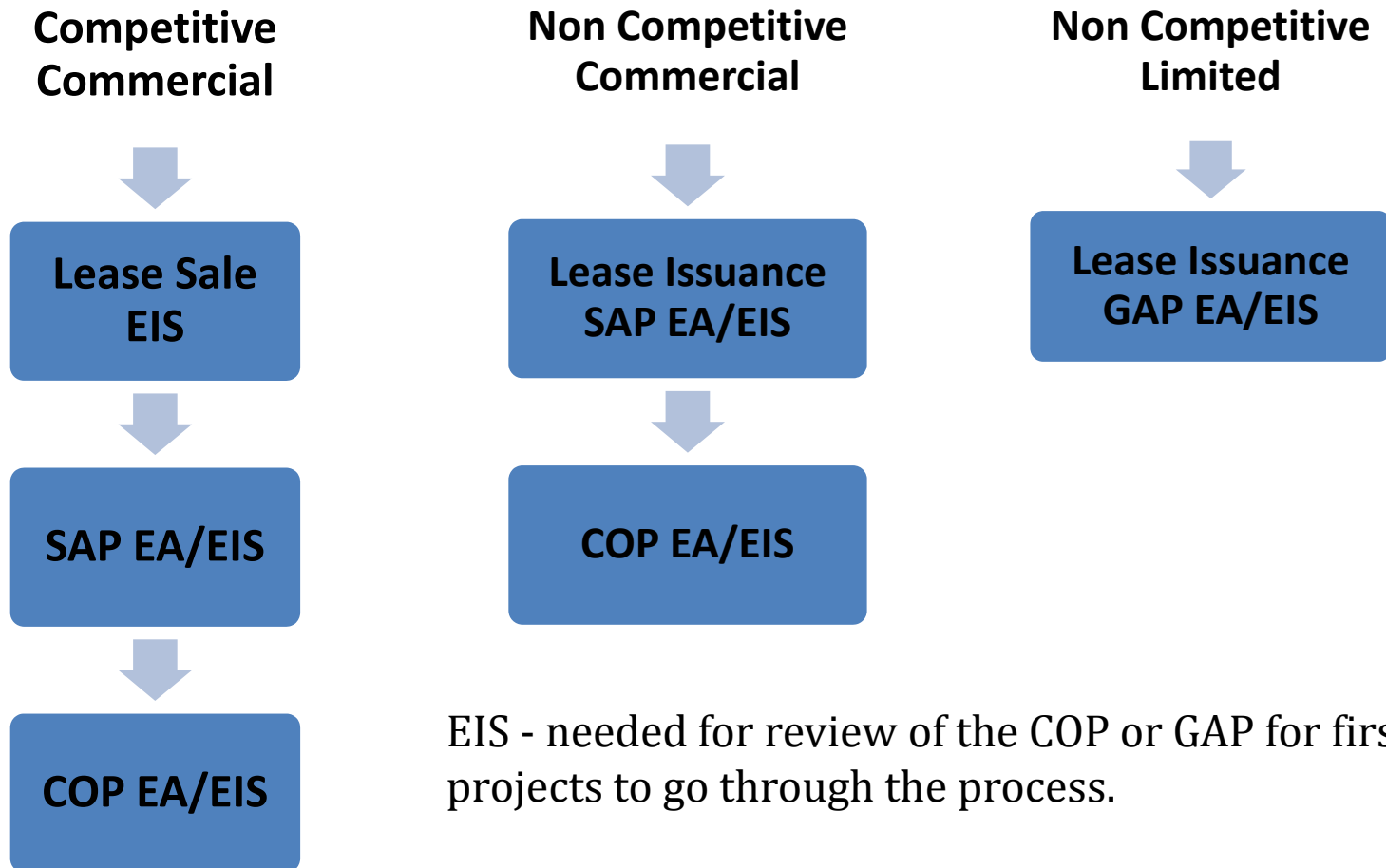
NEPA analysis and CZMA review needed

- Lease issuance
- Plan approval
 - SAP (commercial lease)*
 - COP (commercial lease)
 - GAP (limited lease)*
- Decommissioning

**If noncompetitive, done at same time as lease issuance NEPA/CZMA review.*



Environmental Review



Reduce NEPA Reviews from 3 to 2?

BOEMRE will do one NEPA review for lease sale and site assessment

- but if new information identified in SAP, submitted 6 mos. after commercial lease issued, additional NEPA analysis may be needed.

Rules allow for SAP and COP to be submitted simultaneously

- but enough information would be needed to do NEPA analysis for COP (6 mos. after lease issued)



Financial Requirements

Financial assurance requirements - at different stages of the process.

- Commercial lease (for example)
 - before lease issuance
 - may require additional bond before SAP approval
 - COP bond depending on project

Payments

- Acquisition fees for leases
- Rentals (per acre)
- Operating fee (not applicable to limited lease)
- Pay for NEPA review



Challenges

- Multiple NEPA reviews

"If you have a process that's seven to nine years long, it simply is unacceptable." Secretary of Interior Salazar, November 23, 2010 announcing that BOEMRE has proposed revising its regulations to simplify the leasing process for offshore wind.
- Overlapping permitting requirements and authorities (numerous federal and state agencies)
- Information gaps/cost to developer of getting this information
- Rule anticipates conducting ESA, CZMA, etc. with little site specific information