

Outer Continental Shelf

OCS Regulatory Framework for the Gulf of Mexico Region

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ACRONYMS

ac	acre
AQRV	Air Quality Related Values
BO	Biological Opinion
CAA	Clean Air Act
CBRA	Coastal Barrier Resource Act of 1982
CBRS	Coastal Barrier Resource System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CIAP	Coastal Impact Assistance Program
COE	Corps of Engineers, U.S. Dept. of the Army
COF	covered offshore facilities
CPA	Central Planning Area
CPS	coastal political subdivisions
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DOI	Department of the Interior (also USDO)
E&P	exploration and production
EEZ	Exclusive Economic Zone
EFH	essential fish habitat
EIS	environmental impact statement
EPA	Eastern Planning Area
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FGBNMS	Flower Garden Banks National Marine Sanctuary
FLM	Federal Land Manager
FMP	Fishery Management Plan
FR	<i>Federal Register</i>
ft	feet
FWS	Fish and Wildlife Service (U.S.)
FY	fiscal year
GMFMC	Gulf of Mexico Fishery Management Council
GOM	Gulf of Mexico
GOMESA	Gulf of Mexico Energy Security Act of 2006
H.R.	House Resolution
ha	hectare
ITS	Incidental Take Statement
km	kilometer
lb	pound
m	meter
MARPOL	International Convention for the Prevention of Pollution from Ships Protocol
mi	mile
MMPA	Marine Mammal Protection Act
MMS	Minerals Management Service
MODU	mobile offshore drilling unit
MPRSA	Marine Protection, Research, and Sanctuaries Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
NAAQS	National Ambient Air Quality Standards
NACOSH	National Advisory Committee on Occupational Safety and Health
NARP	National Artificial Reef Plan
NEP	National Estuary Program
NEPA	National Environmental Policy Act
NERR	National Estuarine Research Reserve
NHPA	National Historic Preservation Act
NIOSH	National Institute for Occupational Safety and Health

NMFS	National Marine Fisheries Service
nmi	nautical miles
NOAA	National Oceanic and Atmospheric Administration
NOS	National Oceanic Service
NPDES	National Pollution Discharge Elimination System
NTL	Notice to Lessees and Operators
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
OPA	Oil Pollution Act of 1990
OSFR	oil-spill financial responsibilities
OSHA	Occupational Safety and Health Administration
OSLTF	Oil Spill Liability Trust Fund
PEA	Programmatic Environmental Assessment
P.L.	Public Law
PSD	Prevention of Significant Determination
RCRA	Resource Conservation and Recovery Act
SIP	State Implementation Plan
TSS	traffic separation schemes
U.S.	United States
U.S.C.	United States Code
USCG	U.S. Coast Guard
USDOC	U.S. Department of Commerce
USDOI	U.S. Department of the Interior (also DOI)
USEPA	U.S. Environmental Protection Act
WPA	Western Planning Area

1. OBJECTIVE

The objective of this document is to establish a current, comprehensive regulatory manual to streamline the regulatory process for Minerals Management Service (MMS) offshore activities involving oil, natural gas, and renewable energy. It will provide a framework of regulations and policies addressed in National Environmental Policy Act of 1969 (NEPA) documents required for the Outer Continental Shelf (OCS) leasing program. This document will serve as the source for regulatory framework sections of the Minerals Management Service's NEPA documents.

2. INTRODUCTION

Federal laws mandate the OCS leasing program (i.e., the Outer Continental Shelf Lands Act [OCSLA]) and the environmental review process (i.e., the National Environmental Policy Act). In implementing its responsibilities under the OCSLA, the Minerals Management Service must consult with numerous Federal departments and agencies that have authority to govern and maintain ocean resources pursuant to other Federal laws. Among these Federal entities are the U.S. Coast Guard (USCG), U.S. Environmental Protection Agency (USEPA), U.S. Army Corps of Engineers (COE), U.S. Fish and Wildlife Service (FWS), and the National Oceanic and Atmospheric Administration (NOAA) through the National Marine Fisheries Service (NMFS). Several Federal regulations establish specific consultation and coordination processes with Federal, State, and local agencies (i.e., the Coastal Zone Management Act of 1972 [CZMA], the Endangered Species Act of 1973 [ESA], the Magnuson-Stevens Fishery Conservation and Management Act [MSFCMA], and the Marine Mammal Protection Act [MMPA]). Chapter 3 of this document identifies major Federal laws that are relevant to the OCS leasing process. These regulations are intended to encourage orderly, safe, and environmentally responsible development of oil, natural gas, and alternative energy sources on the OCS. The regulations have been discussed in past NEPA documents for oil and natural gas lease sales, such as *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007-2012*; *Western Planning Area Sales 204, 207, 210, 215, and 218*; *Central Planning Area Sales 205, 206, 208, 213, 216, and 222*, *Final Environmental Impact Statement (Multisale EIS)* (USDOJ, MMS, 2007a) and *Gulf of Mexico OCS Oil and Gas Lease Sales: 2009-2012, Central Planning Area Sales 208, 213, 216, and 222*; *Western Planning Area Sales 210, 215, and 218, Final Supplemental Environmental Impact Statement (Supplemental EIS)* (USDOJ, MMS, 2008). Additional regulations have been discussed in the NEPA document for renewable energy and alternate use activities (e.g., *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007* [USDOJ, MMS, 2007b]).

In addition to coordinating with Federal Government entities, MMS must coordinate and consult with any State governor or local government executives that may be affected by a particular lease, easement, or right-of-way. Each state has developed and implemented a federally approved coastal management program pursuant to the CZMA (16 United States Code [U.S.C.] 1451 et seq.). The boundaries of each State's coastal zone are available on the Internet at <http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>.

3. REGULATORY FRAMEWORK

3.1. OUTER CONTINENTAL SHELF LANDS ACT

The Outer Continental Shelf Lands Act of 1953 (OCSLA), (43 U.S.C. 1331 et seq.), as amended, established Federal jurisdiction over submerged lands on the OCS seaward of State boundaries. The Act, as amended, provides the basis for implementing an OCS oil and gas exploration and development program. The basic goals of the Act include the following:

- to establish policies and procedures for managing the oil and natural gas resources of the OCS that are intended to result in expedited exploration and development of the OCS in order to achieve national economic and energy policy goals, assure national

security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

- to preserve, protect, and develop oil and natural gas resources of the OCS in a manner that is consistent with the need
 - to make such resources available to meet the Nation’s energy needs as rapidly as possible;
 - to balance orderly resource development with protection of the human, marine, and coastal environments;
 - to ensure the public a fair and equitable return on the resources of the OCS; and
 - to preserve and maintain free enterprise competition; and
- to encourage development of new and improved technology for energy resource production, which will eliminate or minimize the risk of damage to the human, marine, and coastal environments.

Under the OCSLA, the Secretary of the Interior is responsible for the administration of mineral exploration and development of the OCS. Within the Department of the Interior (DOI), MMS is charged with the responsibility of managing and regulating the development of OCS oil and gas resources in accordance with the provisions of the OCSLA. The MMS operating regulations are in Title 30, Code of Federal Regulations, Part 250 (30 CFR 250); 30 CFR 251; and 30 CFR 254.

Enacted on August 8, 2005, the Energy Policy Act of 2005 amended Section 8 of the OCSLA (43 U.S.C. 1337) to authorize the Secretary of the Interior to issue a lease, easement, or right-of-way on the OCS for activities that are not otherwise authorized by the OCSLA, or other applicable law, if those activities,

- produce or support production, transportation, or transmission of energy from sources other than oil and gas; or
- use, for energy-related purposes or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCSLA, except that any oil and gas energy-related uses shall not be authorized in areas in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium.

Under Section 20 of the OCSLA, the Secretary shall “. . . conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the area studied and monitored, and for designing experiments to identify the causes of such changes.” Through the Environmental Studies Program, MMS conducts studies designed to provide information on the current status of resources of concern and notable changes, if any, resulting from OCS Program activities.

In addition, the OCSLA provides a statutory foundation for coordination with the affected States and, to a more limited extent, local governments. At each step of the procedures that lead to lease issuance, participation from the affected States and other interested parties is encouraged and sought.

3.2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) provides a national policy that encourages “productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man. . . .” The NEPA requires that all Federal agencies use a systematic, interdisciplinary

approach to protection of the human environment; this approach will ensure the integrated use of the natural and social sciences in any planning and decisionmaking that may have an impact upon the environment. The NEPA also requires Federal agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment and to consider alternatives to such proposed actions. The DOI regulations to implement NEPA can be found in 43 CFR 46.

In 1979, the Council on Environmental Quality established uniform guidelines for implementing the procedural provisions of NEPA. These regulations (40 CFR 1500-1508) provide for the use of the NEPA process to identify and assess the reasonable alternatives to proposed actions that avoid or minimize adverse effects of these actions upon the quality of the human environment. "Scoping" is used to identify the scope and significance of important environmental issues associated with a proposed Federal action through coordination with Federal, State, and local agencies; the public; and any interested individual or organization prior to the development of an environmental impact statement. The process is also intended to identify and eliminate, from further detailed study, issues that are not significant or that have been covered by prior environmental review.

3.3. COASTAL ZONE MANAGEMENT ACT OF 1972

The Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451 et seq.) was enacted by Congress in 1972 to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual State coastal management programs in partnership with the Federal Government. The CZMA Federal consistency regulations require that Federal activities (e.g., OCS lease sales) be consistent to the maximum extent practicable with the enforceable policies of a State's coastal management program. The Federal consistency regulations also require that other federally approved activities (e.g., activities requiring Federal permits, such as activities described in OCS plans) be consistent with a State's federally approved coastal management program. Nonfederal actions requiring the approval of a Federal agency (e.g., issuance of lease, easement, or right-of-way) also must be fully consistent with the enforceable policies of a State's coastal management plan. The Federal consistency requirement is an important mechanism to address coastal effects, to ensure adequate Federal consideration of State coastal management programs, and to avoid conflicts between States and Federal agencies. The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, amended and reauthorized the CZMA. The CZMA is administered by the Office of Ocean and Coastal Resource Management within NOAA's National Oceanic Service (NOS). The NOAA's implementing regulations are found at 15 CFR 930, with the latest revision being published in the *Federal Register* on January 5, 2006.

3.4. ENDANGERED SPECIES ACT OF 1973

The Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1544 et seq.), as amended (43 U.S.C. 1331 et seq.), establishes a national policy designed to protect and conserve threatened and endangered species and the ecosystems they inhabit. The ESA is administered by FWS and NMFS. Section 7 of the ESA governs interagency cooperation and consultation. Under Section 7, MMS consults with both NMFS and FWS to ensure that activities on the OCS under MMS jurisdiction do not jeopardize the continued existence of threatened or endangered species and/or result in adverse modification or destruction of their critical habitat.

Through a biological assessment or an informal consultation, MMS will determine the affect of a proposed action on a listed species, and NMFS and FWS will review and concur or will disagree with the determination. If either agency determines a proposed action would be likely to adversely affect either a listed species or critical habitat, a formal consultation concludes with NMFS and FWS each issuing a Biological Opinion (BO).

In their BO's, NMFS and FWS make recommendations on the modification of oil and gas operations to minimize adverse impacts, although it remains the responsibility of MMS to ensure that proposed OCS activities do not impact threatened or endangered species. If an unauthorized taking occurs or if the authorized level of incidental take (as described in the previous section) is exceeded, reinitiation of formal consultation is likely required.

In 1988, pursuant to Section 7 of the ESA, MMS requested that NMFS provide a “generic” consultation concerning the potential impacts that may occur to endangered and threatened species as a result of explosive-severance activities conducted during structure-removal operations. Much like a programmatic environmental assessment (PEA), the consultation’s “generic” BO was limited to the best scientific information available and concentrated primarily on the majority of structure removals (water depths <200 meters [m] or 656 feet [ft]). The Incidental Take Statement (ITS) was therefore limited to the five species of sea turtle found on the shallow shelf. Reporting guidelines and specific mitigation measures are outlined in the ITS and include (1) the use of a qualified NMFS observer, (2) aerial surveys, (3) detonation delay radii, (4) nighttime blast restrictions, (5) charge staggering and grouping, and (6) possible diver survey requirements.

In an effort to keep explosive weights low, MMS formally requested that NMFS amend the 1988 BO to establish a minimum charge size of 5 pounds (lb). The NMFS Southeast Regional Office subsequently addressed explosive charges ≤5 lb in a separate, informal BO. The October 2003 “de-minimus” BO waives several mitigative measures of the “generic” 1988 BO (i.e., aerial observations, 48-hour pre-detonation observer coverage, onsite NOAA personnel, etc.), reduces the potential impact zone from 3,000 ft to 700 ft (914 m to 213 m), and gives the operators/severing contractors the opportunity to conduct their own observation work.

The MMS prepared the PEA, *Structure-Removal Operations on the Gulf of Mexico Outer Continental Shelf* (USDOJ, MMS, 2005), to evaluate a full range of potential environmental impacts of structure-removal activities in all water depths in the Gulf of Mexico (GOM). On February 28, 2005, MMS submitted the structure-removal PEA and a petition for new Incidental-Take Regulation under the MMPA to NMFS. The PEA addressed the potential impacts of explosive and nonexplosive-severance activities on OCS resources, particularly endangered marine mammals and sea turtles. Pursuant to 30 CFR 350 Subpart Q, operators must obtain a permit from MMS before beginning any platform removal or well-severance activities.

During the review of the permit applications, terms and conditions of the 2007 NMFS Biological Opinion/Incidental Take Statement are implemented for the protection of marine protected species and for reducing possible impacts from any potential activities. In May 2009, NMFS issued new regulations (50 CFR 216) under the MMPA for “Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico.”

On April 13, 2007, MMS published the final rule for *Oil, Gas, and Sulphur Operations in the Outer Continental Shelf (OCS)-Plans and Information-Protection of Marine Mammals and Threatened and Endangered Species in the Federal Register* (72 FR 18577). In 30 CFR 250 Subpart B, MMS requires operators of Federal oil and gas leases to meet the requirements of ESA and MMPA. These requirements outline the environmental, monitoring, and mitigation information that operators must submit with plans for exploration, development, and production.

To add protective measures to ensure that endangered species are protected during OCS oil and gas activities, MMS has also established a Protected Species Stipulation. This stipulation reduces the potential taking of federally protected species (e.g., sea turtles, marine mammals, Gulf sturgeon, and other listed species). The stipulation has been applied to all blocks leased in the GOM since 2001. It requires the lessees and operators to eliminate the release of debris, monitor for marine mammals and sea turtles during activities, and report all sightings and locations of injured or dead protected species; it also requires an oil-spill contingency plan to identify important habitats. This stipulation was developed in consultation with NMFS and FWS, and it is designed to minimize or avoid potential impacts to federally protected species.

3.5. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) of 1976 (16 U.S.C. 1801 et seq.) established and delineated an area from the States’ seaward boundary outward 200 nautical miles (nmi) (230 miles [mi]; 370 kilometers [km]) as a fisheries conservation zone for the United States (U.S.) and its possessions. The Act established national standards for fishery conservation and management.

Congress amended and reauthorized the MSFCMA through passage of the Sustainable Fisheries Act of 1996. In January 2007, President George W. Bush signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. The Act, as amended, established eight Regional Fishery

Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of fishery management plans (FMP's). An FMP is based upon the best available scientific and economic data. The Act also included extensive provisions on individual fishing quotas and intended to end overfishing, help replenish the Nation's fish stocks, and advance international cooperation and ocean stewardship. The reauthorization also promoted domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing and encouraged the development of currently underutilized fisheries. The reauthorization required that the Fishery Management Councils identify EFH. To promote the protection of EFH, Federal agencies are required to consult on activities that may adversely affect EFH designated in the FMP's.

3.5.1. Essential Fish Habitat

There are FMP's in the Gulf of Mexico OCS region for shrimp, red drum, reef fishes, coastal migratory pelagics, stone crabs, spiny lobsters, coral and coral reefs, billfish, and highly migratory species. The Gulf of Mexico Fishery Management Council's (GMFMC) 1998 *Generic Amendment for Addressing Essential Fish Habitat Requirements* (GMFMC, 1998) amends the first seven FMP's listed above, identifying estuarine/inshore and marine/offshore EFH for over 450 managed species (about 400 in the Coral FMP). Although not part of the GMFMC's FMP's, separate FMP's have been finalized by NMFS for Atlantic tunas, swordfish and sharks, and the Atlantic billfish fishery (USDOC, NMFS, 1999a and 1999b).

The essential fish habitat (EFH) boundaries were modified in 2004, reducing the extent of EFH relative to the 1998 Generic Amendment by removing the EFH description and identification from waters between 100 fathoms (183 m; 600 ft) and the seaward limit of the Exclusive Economic Zone (EEZ) (as deep as 3,200 m; 10,499 ft). Only highly migratory fish species now have EFH identified in areas deeper than 100 fathoms (183 m; 600 ft).

The 1998 Generic Amendment identifies threats to EFH and makes a number of general and specific habitat preservation recommendations for pipelines and oil and gas exploration and production activities within State waters and OCS areas. In 2005, a new amendment to the original EFH Generic Amendment was finalized (GMFMC, 2005). The purpose of this action was to amend each of the seven Gulf of Mexico FMP's to (1) describe and identify EFH for the fisheries, (2) minimize to the extent practicable the adverse effects of fishing on such EFH, and (3) encourage the conservation and enhancement of such EFH. This is pursuant to the mandate contained in Section 303(a)(7) of the MSFCMA. To support the description and identification of EFH and to address adverse fishing impacts for all managed GOM species, the GMFMC undertook, over a 2-year period, a detailed analysis of the GOM's physical environment; oceanographic features; estuarine, nearshore, and offshore habitats; all fishery resources; and marine mammals and protected species. The analysis resulted in an EFH Final EIS (GMFMC, 2004) for the seven FMP's. As a result of the analysis from the Final EIS, the GMFMC proposed actions to describe and intensify EFH, to establish habitat areas of particular concern, and to address adverse effects of fishing on EFH. The NMFS approved these revisions, and the rule implementing the changes became effective January 23, 2006. One of the most significant proposed changes in this amendment will reduce the extent of EFH relative to the 1998 Generic Amendment by removing EFH description and identification from waters between 100 fathoms (183 m; 600 ft) and the seaward limit of the EEZ.

The MMS and NMFS have previously entered into a programmatic-level consultation agreement for EFH related to OCS activities in all of the lease areas. The EFH conservation measures recommended by NMFS serve the purpose of protecting EFH and include avoidance distances from topographic-features, No Activity Zones, and live-bottom pinnacle features. Additional conservation provisions and circumstances that require project-specific consultation have also been agreed to through this Programmatic Consultation. These agreements, including avoidance distances from topographic-features, No Activity Zones, and live-bottom pinnacle features appear in Notice to Lessees and Operators (NTL) 2004-G05.

The MMS established the Topographic Features and Live Bottom (Pinnacle Trend) Stipulations to protect essential fish habitat such as seagrass communities, i.e., areas containing biological assemblages consisting of sessile invertebrates (e.g., sea fans, sponges, and corals). The purpose of the Topographic Features Stipulation protects the benthic habitat for coral reef community organisms. These communities could be severely and adversely impacted by oil and gas activities taking place on or near these communities. This stipulation establishes No Activity Zones and other operational restrictions.

The Live Bottom (Pinnacle Trend) Stipulation protects the “live-bottom areas,” defined as seagrass communities; or those areas that contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna. A bathymetry map is required prior to exploration and development activities. If the live-bottom area might be adversely impacted by the proposed activity, the Regional Director will require the lessee to undertake additional measures, such as relocating or monitoring the operations, to assess the impact of the activity on the live-bottom area.

3.5.2. Essential Fish Habitat Consultation

An Essential Fish Habitat Consultation between MMS and NMFS applies to pipeline rights-of-way, plans for exploration and production, and platform removal. The programmatic consultation does not encompass the bidding or granting of leases through lease sales by MMS, although no impact to EFH is implicit *per se* from holding a lease sale.

The NMFS has stated that EFH consultations should be consolidated, where appropriate, within existing environmental review procedures, such as during the NEPA process. Included in EIS’s should be the components of an EFH Assessment that would be submitted to NMFS in request of an EFH consultation. These required components are (1) a description of the proposed action; (2) an analysis of the effects, including cumulative effects, of the proposed action on EFH; (3) MMS’s views regarding the effects of the action on EFH; and (4) the proposed mitigations.

3.6. MARINE MAMMAL PROTECTION ACT

Under the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361-1407), the Secretary of Commerce is responsible for all cetaceans and pinnipeds, except walruses. Authority for implementing the Act is delegated to NMFS. The Secretary of the Interior is responsible for walruses, polar bears, sea otters, manatees, and dugongs. Authority is delegated to FWS. The Act established the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals to provide oversight and advice to the responsible regulatory agencies on all Federal actions bearing upon the conservation and protection of marine mammals.

The MMPA established a moratorium on the taking of marine mammals in waters under U.S. jurisdiction. The MMPA defines “take” to mean “to harass, harm, shoot, wound, trap, hunt, capture, or kill, or attempt to engage in any such conduct (including actions that induce stress, adversely impact critical habitat, or result in adverse secondary or cumulative impacts).” Harassment is the most common form of taking associated with OCS Program activities. The moratorium may be waived when the affected species or population stock is within its optimum sustainable population range and will not be disadvantaged by an authorized taking (e.g., will not be reduced below its maximum net productivity level, which is the lower limit of the optimum sustainable population range). The Act directs that the Secretary, upon request, authorize the unintentional taking of small numbers of marine mammals incidental to activities other than commercial fishing (e.g., offshore oil and gas exploration and development, renewable energy activities) when, after notice and opportunity for public comment, the Secretary finds that the total of such taking during the 5-year (or less) period will have a negligible impact on the affected species. The MMPA also specifies that the Secretary shall withdraw, or suspend, permission to unintentionally take marine mammals incidental to activities such as oil and gas development if, after notice and opportunity for public comment, the Secretary finds (1) that the applicable regulations regarding methods of taking, monitoring, or reporting are not being complied with or (2) the taking is, or may be, having more than a negligible impact on the affected species or stock.

The MMS prepared the PEA, *Structure-Removal Operations on the Gulf of Mexico Outer Continental Shelf* (USDOI, MMS, 2005), to evaluate a full range of potential environmental impacts of structure-removal activities in all water depths in the Gulf of Mexico (GOM). On February 28, 2005, MMS submitted the structure-removal PEA and a petition for new Incidental-Take Regulation under the MMPA to NMFS. The PEA addressed the potential impacts of explosive and nonexplosive-severance activities on OCS resources, particularly endangered marine mammals and sea turtles. Pursuant to 30 CFR 350 Subpart Q, operators must obtain a permit from MMS before beginning any platform removal or well-severance activities.

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3.7. CLEAN AIR ACT

The 1970 Clean Air Act (CAA) (42 U.S.C. 7401 et seq.) established the National Ambient Air Quality Standards (NAAQS) and required the promulgation of national primary and secondary standards. The NAAQS’s primary standards were established to protect public health and the secondary standards were established to protect public welfare. Under the CAA, USEPA sets limits on how much of a pollutant can be in the air anywhere in the United States. Although the CAA is a Federal law covering the entire Nation, the states do much of the work to implement the Act. The law allows individual states to have more stringent pollution controls, but the states are not allowed to have less stringent pollution controls than those for the rest of the United States. The law recognizes that states should take the lead in carrying out the CAA because pollution control problems often require an in-depth understanding of local meteorology, industries, geography, housing patterns, etc.

States may be required to develop State implementation plans (SIP’s) that explain how they will comply with, or remain in compliance with, the CAA. The states must involve the public, through hearings and opportunities to comment, in the development of the SIP. The USEPA must approve the SIP, and if the SIP is not acceptable, USEPA can take over enforcing the CAA in that state. The U.S. Government, through USEPA, assists the states with air quality compliance by providing scientific research, expert studies, engineering designs, and money to support clean air programs.

The CAA established the Prevention of Significant Deterioration (PSD) program to preserve, protect, and enhance the air quality in special regions of the United States. Under the PSD program, these special air quality regions were designated as Class I areas. Class I areas are areas of special national or regional natural, scenic, recreational, or historic value, which the PSD regulations provide special protection. The Federal Land Manager (FLM) for a Class I area is responsible for defining specific Air Quality Related Values (AQRV) for the area and for establishing the criteria to determine any adverse impact on the area’s AQRV. If an FLM determines that a source will adversely impact AQRV in a Class I area, the FLM may recommend that the permitting agency deny issuance of the permit; however, the permitting authority has the final decision to issue or deny the permit. In the Gulf of Mexico OCS Region, FWS is the FLM for the Breton, St. Marks, Okefenokee, and Chassahowitzka Class I areas and the National Park Service is the FLM for the Everglades Class I area.

The CAA also delineates GOM air quality jurisdictional boundaries between the USEPA and DOI. Operations on the Gulf of Mexico OCS, east of 87.5°W. longitude (off the coast of Florida) are subject to USEPA air quality regulations (Section 328 of the CAA) and those west of 87.5°W. longitude (off the coast of Texas, Louisiana, Mississippi, and Alabama) are regulated by MMS (30 CFR 250.302-304).

The Clean Air Act Amendments of 1990 (Public Law [P.L.] 101-549) required MMS to conduct a study to evaluate cumulative, onshore, air quality nonattainment area impacts from OCS petroleum

resource development in the GOM. Subsequent to the completion of the air quality impacts study in 1995, the DOI Secretary consulted with the USEPA Administrator and determined no new air quality requirements were necessary for the area under MMS jurisdiction.

The MMS air quality regulations are codified in 30 CFR 250 Subpart C. These regulations are used to assess and control OCS emissions that may impact air quality in onshore areas. In accordance with MMS air quality regulations, MMS applies defined criteria to determine which OCS plans require an air quality review and performs an impact-based analysis on the selected plans to determine whether the emission source would potentially cause a significant onshore impact. Should the air emission source be deemed significant and require air quality modeling, the USEPA-preferred model, the steady-state Gaussian, Offshore and Coastal Dispersion model should be used.

3.8. CLEAN WATER ACT

The Clean Water Act (CWA) is a 1977 amendment to the Federal Water Pollution Control Act of 1972. The CWA establishes the basic structure for regulating discharges of pollutants to waters of the United States. Under the CWA, it is unlawful for any person to discharge any pollutant from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. Under Sections 301, 302, 304, and 306 of the CWA, USEPA issues technology-based effluent guidelines that establish discharge standards based on treatment technologies that are available and economically achievable. Each USEPA Region issues permits that meet or exceed the guidelines and standards. The CWA also funded the construction of sewage treatment plants under the construction grants program and recognized the need for planning to address the critical problems posed by nonpoint source pollution.

All waste streams generated from offshore oil and gas activities are regulated by USEPA, primarily by general permits. The USEPA may not issue a permit for a discharge into ocean waters unless the discharge complies with the guidelines established under Section 403(c) of the CWA. These guidelines are intended to prevent degradation of the marine environment and require an assessment of the effect of the proposed discharges on sensitive biological communities and aesthetic, recreational, and economic values. The most recent effluent guidelines for the oil and gas extraction point-source category were published in 1993. The USEPA also published new guidelines for the discharge of synthetic-based drilling fluids on January 22, 2001.

Within the GOM, USEPA Region 6 has jurisdiction over the all of the Western Planning Area (WPA) and the majority of the Central Planning Area (CPA). The USEPA Region 4 has jurisdiction over the eastern portion of the GOM, including all of the Eastern Planning Area (EPA) and part of the CPA off the coasts of Alabama and Mississippi. Each region has promulgated general permits for discharges that incorporate the 1993 effluent guidelines as a minimum. In some instances, a site-specific permit is required.

Other sections of the CWA also apply to offshore oil and gas activities. Section 404 of the CWA requires a COE permit for the discharge or deposition of dredged or fill material in all the waters of the U.S., including ocean areas, estuaries, streams, ponds, rivers, lakes, and wetlands. Approval by COE, with consultation from other Federal and State agencies, is also required for installing and maintaining pipelines in coastal areas of the GOM. Section 303 of the CWA provides for the establishment of water quality standards that identify a designated use for waters (e.g., fishing/swimming). States have adopted water quality standards for ocean waters within their jurisdiction (waters of the territorial sea that extend out to 3 nmi off Louisiana, Mississippi, and Alabama, and 3 leagues off Texas and Florida). Section 401 of the CWA gives authority to the States and Tribes to review and approve, condition, or deny all Federal permit or licenses that might result in a discharge to State or Tribal waters, including wetlands. Section 402(b) of the CWA authorizes USEPA approval of State permit programs for discharges from point sources. Section 316(b) of the CWA requires NPDES permits to ensure that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available to minimize adverse environmental impact from impingement and entrainment of aquatic organisms. Final regulations for Phase III facilities were published in June 2006 and apply to new offshore oil and gas facilities designed to use more than 2 million gallons per day, of which at least 25 percent is for cooling. The USEPA estimated 21 platforms and 103 mobile offshore drilling units (MODU's) would be affected nationally. The requirements will be incorporated into each USEPA region's permit when it is reissued.

The liquefied natural gas facilities, which use seawater for warming rather than cooling, are not included in Phase III.

3.9. CLEAN WATER ACT—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The USEPA is responsible for implementing certain provisions of the CWA regulations, i.e., 40 CFR 122-125. The CWA prohibits the discharge of pollutants into U.S. waters unless an NPDES permit has been issued (33 U.S.C. § 1342). The NPDES storm water permit program requires operators of a construction site 1 acre or larger to obtain authorization to discharge storm water under an NPDES Construction Storm Water Permit. The overall goal of this permit is to protect the quality and beneficial uses of the surface water resources from pollution in storm water runoff from construction activities. This goal is achieved through the development and implementation of a Storm Water Pollution Prevention Plan and associated Best Management Practices.

Installation of the proposed onshore transmission lines and associated components would require an NPDES General Stormwater Construction Permit. An NPDES Notice of Intent for construction activities that includes general project information and certification that the activity would not impact endangered or threatened species would be submitted to the NPDES permitting authority. An application for an NPDES General Stormwater Construction Permit would be filed prior to commencement of construction.

3.10. HARMFUL ALGAL BLOOM AND HYPOXIA RESEARCH AND CONTROL ACT

The Harmful Algal Bloom and Hypoxia Research and Control Act (P.L. 108-456) was passed in 1998 in response to a surge in blooms nationwide, which resulted in fish kills, beach and shellfish bed closures, and manatee deaths. It was reauthorized by passing the Harmful Algal Bloom and Hypoxia Amendments Act of 2004 (P.L. 103-383). The amendments include a periodic review to evaluate program effectiveness. The Act required an assessment of the causes and consequences of hypoxia in the GOM and the development of a plan to reduce hypoxia. Six reports commissioned by the White House Committee on Environment and Natural Resources comprise the assessment. The Mississippi River/Gulf of Mexico Watershed Nutrient Task Force developed the Action Plan with the goal to halve the size of the hypoxic zone in 15 years. The goal, as stated in the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force's January 2001 Action Plan, is as follows: "By the year 2015, subject to the availability of additional resources, reduce the 5-year running average aerial extent of the Gulf of Mexico hypoxic zone to less than 5,000 square kilometers through implementation of specific, practical, and cost effective voluntary actions by all States, Tribes, and all categories of sources and removals within the Mississippi/Atchafalaya River Basin to reduce the annual discharge of nitrogen into the Gulf" (Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, 2001).

3.11. OIL POLLUTION ACT OF 1990

The Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 et seq.) is comprehensive legislation that includes, in part, provisions to (1) improve oil-spill prevention, preparedness, and response capability; (2) establish limitations on liability for damages resulting from oil pollution; and (3) implement a fund for the payment of compensation for such damages.

The OPA, in part, revised Section 311 of the CWA to expand Federal spill-response authority; increase penalties for spills; establish a USCG prepositioned, oil-spill-response equipment site; require vessel and facility response plans; and provide for interagency contingency plans. Many of the statutory changes required corresponding revisions to the National Oil and Hazardous Substances Pollution Contingency Plan.

If a spill or substantial threat of a spill of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is considered to be of such a size or character to be a substantial threat to the public health or welfare of the U.S., under provisions of the Act, the President (through the USCG) now has the authority to direct all Federal, State, and private actions to remove a spill or to mitigate or prevent the threat of the spill. Potential impacts from spills of oil or a hazardous substance to fish, shellfish, wildlife, other natural resources, or the public and private beaches of the U.S. would be an example of the degree or type of threat considered to be of such a size or character to be a substantial threat to the U.S. public

health or welfare. In addition, the USCG's authority to investigate marine accidents involving foreign tankers was expanded to include accidents in the EEZ. The Act also established USCG oil-spill, district response groups (including equipment and personnel) in each of the 10 USCG districts, with a national response unit, the National Strike Force Coordination Center, located in Elizabeth City, North Carolina.

The OPA strengthened spill planning and prevention activities by providing for the establishment of interagency, spill contingency plans for areas of the U.S. To achieve this goal, Area Committees composed of qualified Federal, State, and local officials were created to develop Area Contingency Plans. The OPA mandates that contingency plans address the response to a "worst case" spill or a substantial threat of such a spill. It also required that vessels and both onshore and offshore facilities have response plans approved by the President. These plans were required to adhere to specified requirements, including demonstration that they had contracted with private parties to provide the personnel and equipment necessary to respond to or mitigate a "worst case" spill. In addition, OPA provided for increased penalties for violations of statutes related to oil spills, including payment of triple costs by persons who fail to follow contingency plan requirements.

The Act further specifies that vessel owners, not cargo owners, are liable for spills and raises the liability limits from \$150 per gross ton to \$1,200 per gross ton for vessels. The maximum liability for offshore facilities is set at \$75 million plus unlimited removal costs; liability for onshore facilities or a deepwater port is set at \$350 million. Willful misconduct, violation of any Federal operating or safety standard, failure to report an incident, or refusal to participate in a cleanup subjects the spiller to unlimited liability under provisions of the Act.

Pursuant to OPA, double hulls are required on all newly constructed tankers. Double hulls or double containment systems are required on all tank vessels less than 5,000 gross tons (i.e., barges). Since 1995, existing single-hull tankers are being phased out based on size and age.

An Interagency Coordinating Committee on Oil Pollution Research was established by the provisions of the Act and tasked with submitting a plan for the implementation of an oil-pollution research, development, and demonstration program to Congress. The plan was submitted to Congress in April 1992. This program addressed, in part, an identification of important oil-pollution research gaps, an establishment of research priorities and goals, and an estimate of the resources and timetables necessary to accomplish the identified research tasks. In 1992, the program plan was also provided to the Marine Board of the National Research Council for review and comment as required by OPA. Upon review, the Marine Board recommended that the plan be revised using a framework that addresses spill prevention, human factors, and field testing demonstration of developed response technology. This was accomplished in April 1997.

In October 1991, Executive Order 12777 delegated the provisions of OPA to various departments and agencies within the U.S. Government, including the USCG, USEPA, U.S. Department of Transportation, and DOI. The Secretary was delegated Federal Water Pollution Control Act authority over offshore facilities and associated pipelines (except deepwater ports) for all Federal and State waters. The Secretary's functions under the Executive Order include spill prevention, oil-spill contingency plans, equipment, financial responsibility certification, and civil penalties.

The Oil Spill Liability Trust Fund (OSLTF), authorized under OPA and administered by the USCG, is available to pay for removal costs and damages not recovered from responsible parties. The Fund provides up to \$1 billion per incident for cleanup costs and other damages. The OSLTF was originally established under Section 9509 of the Internal Revenue Code of 1986. It was one of several similar Federal trust funds funded by various levies set up to provide for the costs of water pollution. The OPA generally consolidated the liability and compensation schemes of these prior, Federal oil-pollution laws and authorized the use of the OSLTF, which consolidated the funds supporting those regimes. Those prior laws included the Federal Water Pollution Control Act, Trans-Alaska Pipeline Authorization Act, Deepwater Port Act, and OCSLA. On February 20, 1991, the National Pollution Funds Center was commissioned to serve as fiduciary agent for the OSLTF.

The OPA provides that parties responsible for offshore facilities demonstrate, establish, and maintain oil-spill financial responsibility (OSFR) for those facilities. The OPA replaced and rescinded the OCSLA OSFR requirements. Executive Order 12777 assigned the OSFR certification function to DOI; the Secretary, in turn, delegated this function to MMS.

The minimum amount of OSFR that must be demonstrated is \$35 million for covered offshore facilities (COF's) located on the OCS and \$10 million for COF's located in State waters. A COF is any structure and all of its components, equipment, pipeline, or device (other than a vessel or other than a

pipeline or deepwater port licensed under the Deepwater Port Act of 1974) used for exploring for, drilling for, or producing oil or for transporting oil from such facilities. The regulation provides an exemption for persons responsible for facilities having a potential worst-case oil spill of 1,000 barrels or less, unless the risks posed by a facility justify a lower threshold volume.

The Secretary of Transportation has authority for vessel oil-pollution financial responsibility, and the USCG regulates the oil-spill financial responsibility program for vessels. An MODU is classified as a vessel. However, a well drilled from an MODU is classified as an offshore facility under this rule.

In an effort to reduce the potential taking of federally protected species via oil pollution, MMS has established a Protected Species Stipulation. The stipulation has been applied to all blocks leased in the GOM since 2001. It requires an oil-spill contingency plan to identify important habitats, including designated critical habitat, used by listed species (e.g., sea turtle nesting beaches and piping plover critical habitat), and it requires the strategic placement of spill cleanup equipment to be used only by personnel trained in less intrusive, cleanup techniques on beach and bay shores. This stipulation was developed in consultation with NMFS and FWS, and it is designed to minimize or avoid potential impacts to federally protected species such as marine mammals.

3.12. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.), modified by the 1986 Superfund Amendments and Reauthorization Act and Section 1006 of OPA, requires the promulgation of regulations for the assessment of natural resource damages from oil spills and hazardous substances. These Acts provide for the designation of trustees who determine resource injuries, assess natural resource damages (including the costs of assessing damages), present claims, recover damages, and develop and implement plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under the trusteeship.

The DOI was given the authority under CERCLA to develop regulations and procedures for the assessment of damages for natural resource injuries resulting from the release of a hazardous substance or oil spills (Natural Resource Damage Assessment Regulations). These rulemakings are all codified at 43 CFR 11. The CERCLA specified two types of procedures to be developed: type “A” procedures for simplified, standard assessments requiring minimal field observations in cases of minor spills or releases in certain environments; and type “B” site-specific procedures for detailed assessments for individual cases.

3.13. RESOURCE CONSERVATION AND RECOVERY ACT

The Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984, provides a framework for the safe disposal and management of hazardous and solid wastes. The OCS wastes taken to shore are regulated under RCRA. The USEPA has exempted many oil and gas wastes from coverage under the hazardous wastes regulations of RCRA. Exempt wastes (exploration and production (E&P) waste) include those generally coming from an activity directly associated with the exploration, drilling, production, or processing of a hydrocarbon product. The RCRA also requires hazardous waste treatment, storage, and disposal facilities to obtain permits and to demonstrate in their applications that design and operating standards established by the USEPA (or an authorized State) will be met. Therefore, most oil and gas wastes taken onshore are not regulated by the Federal Government but by various Gulf States’ programs. It is occasionally possible for a RCRA exempt E&P waste to fail a State’s E&P waste disposal regulations. If wastes generated on the OCS are not exempt and are hazardous, the wastes must be transported to shore for disposal at a hazardous waste facility.

3.14. MARINE PLASTIC POLLUTION RESEARCH AND CONTROL ACT

The Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1901 et seq.) implements Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL). Under provisions of the law, all ships and watercraft, including all commercial and recreational fishing vessels, are prohibited from dumping plastics at sea. The law also severely restricts the legality of dumping other

vessel-generated garbage and solid-waste items both at sea and in U.S. navigable waters. The USCG is responsible for enforcing the provisions of this law and has developed final rules for its implementation (33 CFR 151, 155, and 158), calling for adequate trash reception facilities at all ports, docks, marinas, and boat-launching facilities.

The GOM has received “Special Area” status under MARPOL, thereby prohibiting the disposal of all solid waste into the marine environment. Fixed and floating platforms, drilling rigs, manned production platforms, and support vessels operating under a Federal oil and gas lease are required to develop waste management plans and to post placards reflecting discharge limitations and restrictions.

Waste Management Plans require oil and gas operators to describe procedures for collecting, processing, storing, and discharging garbage and to designate the person who is in charge of carrying out the plan. The MMS regulations explicitly prohibit the disposal of equipment, cables, chains, containers, or other materials into offshore waters. Portable equipment, spools or reels, drums, pallets, and other loose items must be marked in a durable manner with the owner’s name prior to use or transport over offshore waters. Smaller objects must be stored in a marked container when not in use. These rules also apply to all oceangoing ships of 12 m (39 ft) or more in length that are documented under the laws of the U.S. or numbered by a State and that are equipped with a galley and berthing. Placards noting discharge limitations and restrictions, as well as penalties for noncompliance, apply to all boats and ships 8 m (26 ft) or more in length. Furthermore, the Shore Protection Act of 1988 (33 U.S.C. 2601 et seq.) requires ships transporting garbage and refuse to assure that the garbage and refuse is properly contained on-board so that it will not be lost in the water from inclement wind or weather conditions.

3.15. NATIONAL FISHING ENHANCEMENT ACT OF 1984

The National Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), also known as the Artificial Reef Act, establishes broad artificial reef development standards and a national policy to encourage the development of artificial reefs that will enhance fishery resources and commercial and recreational fishing. It mandated that a long-term artificial reef plan be developed. The Secretary of Commerce provided leadership in developing the National Artificial Reef Plan (NARP) that identifies the roles of Federal, State, local, and private agencies in the development of artificial reefs. It provides national guidelines on the siting, materials, design, regulatory requirements, construction, management, and liability of artificial reefs. It cites key documents, provides the best existing information, and lists future research needs. The Secretary of the Army issues permits under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA to responsible applicants for reef development projects in accordance with NARP, as well as regional, State, and local criteria and plans. The law also limits the liability of reef developers complying with permit requirements and includes the availability of all surplus Federal ships for consideration as reef development materials. The MMS’s regulations (30 CFR 250.1730) allow retired platforms to be used for reefs when such platforms are permitted and designated for use by a State’s artificial reef program and within areas are established for receipt of platforms for the enhancement of habitat for fish and other aquatic life.

3.15.1. Fishermen’s Contingency Fund

Final regulations for the implementation of Title IV of the OCSLA, as amended (43 U.S.C. 1841-1846), were published in the *Federal Register* on January 24, 1980 (50 CFR 296). The OCSLA, as amended, established the Fishermen’s Contingency Fund (not to exceed \$2 million) to compensate commercial fishermen for actual and consequential damages, including loss of profit due to damage or loss of fishing gear by various materials and items associated with oil and gas exploration, development, or production on the OCS. This Fund, administered by the Financial Services Division of NMFS, mitigates most losses suffered by commercial fishermen due to OCS oil and gas activities.

As required in the OCSLA, nine area accounts have been established—five in the GOM, one in the Pacific, one in Alaska, and two in the Atlantic. The five Gulf accounts cover the same areas as the five MMS, Gulf of Mexico OCS Region Districts. Each area account is initially funded at \$100,000 and cannot exceed this amount. The accounts are initiated and maintained by assessing holders of leases, pipeline rights-of-way and easements, and exploration permits. These assessments cannot exceed \$5,000 per operator in any calendar year.

The claims eligible for compensation are generally contingent upon the following: (1) damages or losses must be suffered by a commercial fisherman; and (2) any actual or consequential damages,

including loss of profit, must be due to damages or losses of fishing gear by items or obstructions related to OCS oil and gas activities. Damages or losses that occur in non-OCS waters may be eligible for compensation if the item(s) causing damages or losses are associated with OCS oil and gas activities.

Ineligible claims for compensation are generally (1) damages or losses caused by items that are attributable to a financially responsible party; (2) damages or losses caused by negligence or fault of the commercial fishermen; (3) occurrences before September 18, 1978; (4) claims of damages to, or losses of, fishing gear exceeding the replacement value of the fishing gear; (5) claims for loss of profits in excess of 6 months, unless supported by records of the claimant's profits during the previous 12 months; (6) claims or any portions of damages or losses claimed that will be compensated by insurance; (7) claims not filed within 60 days of the event of the damages or losses; and (8) damages or losses caused by natural obstructions or obstructions unrelated to OCS oil and gas activities.

There are several requirements for filing claims, including one that a report stating, among other things, the location of the obstruction, must be made within 5 days after the event of the damages or losses; this 5-day report is required to gain presumption of causation. A detailed claim form must be filed within 60 days of the event of the damages or losses. The specifics of this claim are contained in 50 CFR 296. The claimant has the burden of establishing all the facts demonstrating eligibility for compensation, including the identity or nature of the item that caused the damages or losses and its association with OCS oil and gas activity.

Damages or losses are presumed to be caused by items associated with OCS oil and gas activities provided the claimant establishes that (1) the commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas activities; (2) the 5-day report was filed; (3) there is no record in the most recent Department of Commerce's National Oceanic and Atmospheric Administration/Ocean Service (NOAA/NOS) nautical charts or weekly USCG Notice to Mariners of an obstruction in the immediate vicinity; and (4) no proper surface marker or lighted buoy marked the obstruction. Damages or losses occurring within a one-quarter-mile radius of obstructions recorded on charts, listed in the Notice to Mariners, or properly marked are presumed to involve the recorded obstruction.

3.16. PORTS AND WATERWAYS SAFETY ACT OF 1972

The Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.) authorizes the USCG to implement, in waters subject to the jurisdiction of the U.S., measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include, but are not limited to, reporting and operating requirements, surveillance and communication systems, routing systems, and fairways.

The Act authorizes the USCG to designate safety fairways, fairway anchorages, and traffic separation schemes (TSS's) to provide unobstructed approaches through oil fields for vessels using GOM ports. The USCG provides listings of designated fairways, anchorages, and TSS's in 33 CFR 166 and 167, along with special conditions related to oil and gas production in the GOM. In general, no fixed structures, such as platforms, are allowed in fairways. Temporary underwater obstacles such as anchors and attendant cables or chains attached to floating or semisubmersible drilling rigs may be placed in a fairway under certain conditions. Fixed structures may be placed in anchorages, but the number of structures is limited by spacing.

A TSS is a designated routing measure that is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes (33 CFR 167.5). The Galveston Bay TSS and Port Arthur TSS are the only two TSS's established in the WPA. The Lower Mississippi River TSS and Berwick Bay TSS are the only TSS established in the CPA. The Tampa TSS is the only TSS located in the EPA.

3.17. MARINE AND ESTUARINE PROTECTION ACTS

The Sanctuaries and Reserves Division, NOS, NOAA, of the Department of Commerce, administers the National Marine Sanctuary and National Estuarine Research Reserve Programs. The marine sanctuary program was established by the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), and the estuarine research reserve program was established by the CZMA of 1972.

Marine sanctuaries and estuarine research reserves are designed and managed to meet the following goals, among others:

- enhance resource protection through the implementation of a comprehensive, long-term management plan tailored to the specific resources;
- promote and coordinate research to expand scientific knowledge of sensitive marine resources and improve management decisionmaking;
- enhance public awareness, understanding, and wise use of the marine environment through public interpretive and recreational programs; and
- provide for optimum compatible public and private use of special marine areas.

3.17.1. Marine Protection, Research, and Sanctuaries Act of 1972

The Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 (33 U.S.C. 1401 et seq.) established the National Marine Sanctuary Program, which is administered by NOAA of the Department of Commerce. The Flower Garden Banks National Marine Sanctuary (FGBNMS), which was designated in 1992, is the only sanctuary that exists in the northern GOM. The DOI has taken action to protect the biological resources of the sanctuary from damage due to oil and gas exploration and development activities. The MMS has established a “No Activity Zone” around the sanctuary and has established other operational restrictions as described in the Topographic Features Stipulation. Stetson Bank was added to the FGBNMS in 1996 and is protected from oil and gas activities by a “No Activity Zone.” Whole blocks and portions of blocks that lie within the boundaries of the FGBNMS at the East and West Flower Garden Banks and Stetson Bank are excluded from leasing.

The MPRSA, also known as the Ocean Dumping Act, regulates ocean dumping in territorial seas or the contiguous zone of the United States. Under 40 CFR 228, pursuant to Section 103 of the MPRSA, sites and times for ocean dumping of dredged and nondredged materials were designated by USEPA after a determination that such dumping will not unreasonably degrade or endanger human health, welfare, or the marine environment. The EIS’s on these disposal sites describe impacts that are expected to occur over a period of 25 years. Under 33 U.S.C. 1413 (33 CFR 324), COE reviews applications for permits to transport dredged and nondredged materials for the purpose of dumping it in ocean waters. On December 31, 1981, 33 U.S.C. 1412a mandated the termination of ocean dumping of sewage sludge and industrial waste.

3.17.2. National Estuarine Research Reserves

The National Estuarine Research Reserve (NERR) System is a network of protected areas established for long-term research, education, and stewardship. This partnership program between NOAA and coastal states has established five reserves (Grand Bay National Estuarine Research Reserve in Mississippi, Weeks Bay National Estuarine Research Reserve in Alabama, Rookery Bay National Estuarine Research Reserve and Apalachicola National Estuarine Research Reserve in Florida, and Mission-Aransas Reserve in Texas) in the GOM.

Grand Bay National Estuarine Research Reserve covers about 8,400 acres (ac) (7,470 hectares (ha)) in Jackson County, Mississippi. Located between Pascagoula and the Alabama State line, it contains diverse habitats that support several rare or endangered plants and animals. The Grand Bay NERR’s fishery resources include oysters, fish, and shrimp. The area also has recreational resources and archaeological sites.

Weeks Bay National Estuarine Research Reserve covers a small estuary of approximately 3,000 ac (1,215 ha) in Baldwin County, Alabama. Weeks Bay is a shallow open bay with an average depth of less than 4.9 ft (1.5 m) and extensive vegetated wetland areas. The bay receives waters from the spring-fed Fish and Magnolia Rivers and connects with Mobile Bay through a narrow opening.

Rookery Bay National Estuarine Research Reserve, at more than 8,500 ac (3,440 ha), preserves a large mangrove-filled bay and two creeks, along with their drainage corridors. Management of the sanctuary is performed by the Florida Department of Environmental Protection, The Nature Conservancy, and the National Audubon Society. This unique management structure was created when the two private organizations granted a dollar-per-year, 99-year lease of the land to the State. Federal and State funds

will add additional key acreage to the existing core area. The diversity of the area's fauna can be recognized by the porpoises that feed there and the bald eagles and white-tailed deer that make Rookery Bay their permanent residence. Within the Rookery Bay NERR is a marine laboratory that was established before the designation of NERR. The marine laboratory provides data used in important coastal management decisions. The Rookery Bay NERR serves as a prime example of why Congress established the estuarine research reserve program. It provides a location for long-term research, education, and stewardship within a protected area of the Florida coast.

At about 190,000 ac (76,890 ha), the Apalachicola National Estuarine Research Reserve is one of the largest remaining naturally functioning ecosystems in the Nation, and it is also the first sanctuary on the mouth of a major navigable river. Its establishment served to promote improved cooperation concerning river navigation among the States of Florida, Alabama, and Georgia. The oyster industry is the major business activity of the Apalachicola NERR, which is located adjacent to the sanctuary. It is expected that the sanctuary will benefit this and other fishing industries by protecting the environment and by providing research information that will help assure the continued productivity of the bay/river ecosystem. An FWS refuge and a State park, representing a unique cooperative effort at ecosystem protection, exist within the boundaries of the reserve.

The Mission-Aransas National Estuarine Research Reserve covers 185,708 ac (75,153 ha) in Aransas and Refugio Counties, Texas. It is a contiguous complex of wetland, terrestrial, and marine environments. The land is mostly coastal prairie with unique oak motte habitats. The wetlands include riparian habitat and fresh and saltwater marshes. Within the water areas, the bays are large, open, and include extensive tidal flats, seagrass meadows, mangroves, and oyster reefs. These unique and diverse estuarine habitats in the Western GOM support a host of endangered and threatened species, including the endangered whooping crane.

3.17.3. National Estuary Program

In 1987, an amendment to the Clean Water Act, known as the Water Quality Act (P.L. 100-4), established the National Estuary Program (NEP). The purpose of the NEP is to identify nationally important estuaries, to protect and improve their water quality, and to enhance their living resources. Under NEP, which is administered by USEPA, the comprehensive management plans are generated to protect and enhance environmental resources. The governor of a state may nominate an estuary for the Program and request that a Comprehensive Conservation and Management Plan be developed for an estuary. Representatives from Federal, State, and interstate agencies; academic and scientific institutions; and industry and citizen groups work during a 3- to 5-year period to define objectives for protecting the estuary, to select the chief problems to be addressed in the Plan, and to ratify a pollution control and resource management strategy to meet each objective. Strong public support and subsequent political commitments are needed to accomplish the actions called for in the Plan; hence, the 3- to 5-year time period to develop the strategies. A total of 28 estuaries have been selected for the Program, 7 of which are in the GOM: Sarasota Bay, Charlotte Harbor, and Tampa Bay in Florida; Mobile Bay in Alabama; the Barataria-Terrebonne Estuarine Complex in Louisiana; and Galveston Bay and Coastal Bend Bay and Estuaries in Texas.

3.18. COASTAL BARRIER RESOURCES ACT

The Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 et seq.) of 1982 established that undeveloped coastal barrier islands, per the Act's definition, may be included in a Coastal Barrier Resource System (CBRS).

The CBRA prohibits all new Federal expenditures and financial assistance within the CBRS, with certain specific exceptions, including energy development. The purpose of this legislation was to end the Federal Government's encouragement for development on barrier islands by withholding Federal flood insurance for new construction of or substantial improvements to structures on undeveloped coastal barriers.

3.19. NATIONAL HISTORIC PRESERVATION ACT

The National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470 et seq.), states that any Federal agency, before approving federally permitted or federally funded undertakings, must take

into consideration the effect of that undertaking on any property listed on, or eligible for, the National Register of Historic Places. Implied in this legislation and Executive Order 11593 is that an effort be made to locate such sites before development of an area. Section 101(b)(4) of NEPA states that it is the continuing responsibility of the Federal Government to preserve important historic and cultural aspects of our natural heritage. In addition, Section 11(g)(3) of the OCSLA, as amended, states that “exploration (oil and gas) will not . . . disturb any site, structure, or object of historical or archaeological significance.”

The NHPA provides for a National Register of Historic Places to include districts, sites, buildings, structures, and objects noteworthy in American history, architecture, archaeology, and culture. These items may bear National, State, or local significance. The NHPA provides funding for the State Historic Preservation Officer and his staff to conduct surveys and comprehensive preservation planning, establishes standards for State programs, and requires States to establish mechanisms for certifying local governments to participate in the National Register nomination and funding programs.

Section 106 of the NHPA (36 CFR 800), “Protection of Historic Properties,” as amended through 2004, requires that Federal agencies having direct or indirect jurisdiction over a proposed Federal, federally assisted, or federally licensed undertaking, prior to approval of the expenditure of funds or the issuance of a license, take into account the effect of the undertaking on any district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation, established under Title II of this Act and appointed by the President, a reasonable opportunity to comment with regard to the undertaking. Federal agencies are required to consult with Indian tribes on a government-to-government basis in a manner that is respectful of tribal sovereignty. The regulations require Federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them.

An undertaking has an effect on a historic property when that undertaking has the potential to alter the characteristics of the property that qualified the property for inclusion in the National Register of Historic Places. The effects can include physical disturbance, noise, or visual effects. If an adverse effect on historic properties is found, MMS would notify the Advisory Council on Historic Preservation, consult with the State Historic Preservation Office, and encourage the applicant to avoid, minimize, or mitigate the adverse effects. Ground-disturbing activities associated with construction, as well as visual effects of OCS energy infrastructure (e.g., wind turbine generators), are subject to Section 106 review.

A Section 106 review refers to the Federal review process designed to ensure that historic properties are considered during Federal project planning and execution. The review process is administered by the Advisory Council on Historic Preservation, an independent Federal agency, together with the State Historic Preservation Office.

The historic properties (i.e., archaeological resources) on the OCS include historic shipwrecks, sunken aircraft, lighthouses, and prehistoric archaeological sites that have become inundated as a result of the 120-m (394-ft) rise in global sea level since the height of the last Ice Age (ca. 19,000 years ago). Since the OCS is not federally owned land and since the Federal Government has not claimed direct ownership of historic properties on the OCS, MMS only has the authority under Section 106 of the NHPA to ensure that our funded and permitted actions do not adversely affect significant historic properties. Beyond avoidance of adverse impacts, MMS does not have the legal authority to manage the historic properties on the OCS.

Section 110 of the NHPA directs the heads of all Federal agencies to assume responsibility for the preservation of National Register listed or eligible historic properties owned or controlled by their agency, as well as those not under agency jurisdiction and control but that are potentially affected by agency actions. Federal agencies are directed to locate, inventory, and nominate properties to the National Register, to exercise caution to protect such properties, and to use such properties to the maximum extent feasible. Other major provisions of Section 110 include documentation of properties adversely affected by Federal undertakings, the establishment of trained Federal preservation officers in each agency, and the inclusion of the costs of preservation activities as eligible agency project costs.

3.20. RIVERS AND HARBORS ACT OF 1899

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403 et seq.) prohibits the unauthorized obstruction or alteration of any navigable water of the U.S. The construction of any structure in or over any navigable water of the U.S., the excavating from or depositing of dredged material or refuse in such

waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful without prior approval from COE. The legislative authority to prevent inappropriate obstructions to navigation was extended to installations and devices located on the seabed to the seaward limit of the OCS by Section 4(e) of the OCSLA of 1953, as amended.

3.21. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678) was enacted to assure, to the extent possible, safe and healthful working conditions and to preserve our human resources. The Act encourages employers and employees to reduce occupational safety and health hazards in their places of employment and stimulates the institution of new programs and the perfection of existing programs for providing safe and healthful working conditions. The Act established the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the National Advisory Committee on Occupational Safety and Health (NACOSH). The NIOSH is responsible for conducting research and making recommendations for the prevention of work-related injury and illness. The OSHA is responsible for developing and enforcing workplace safety and health regulations. The NACOSH advises the Secretaries of Labor and Health and Human Services on occupational safety and health programs and policies.

The Act empowers the Secretary of Labor or his representative to enter any factory, plant, establishment, workplace, or environment where work is performed by employees and to inspect and investigate during regular working hours and at other reasonable times any such place of employment and all pertinent conditions and equipment therein. If, upon inspection, the Secretary of Labor or authorized representative believes that an employer has violated provisions of the Act, the employer shall be issued a citation and given 15 days to contest the citation or proposed assessment of penalty.

3.22. ENERGY POLICY ACT OF 2005

The Energy Policy Act of 2005 (P.L. 109-58) encourages increased domestic production of oil and natural gas, grants MMS new authority for Federal offshore alternate energy uses, and requires a comprehensive inventory of oil and gas resources on the OCS.

The Act grants MMS new responsibilities over Federal offshore renewable energy and related uses on the OCS. Section 388 of the Act provides an initiative to facilitate increased renewable energy production on the OCS.

Section 388 gives the Secretary the authority to

- grant leases, easements, or rights-of way for renewable energy-related uses on Federal OCS lands,
- act as a lead agency for coordinating the permitting process with other Federal agencies,
- monitor and regulate those facilities used for renewable energy production and energy support services, and
- establish an interagency comprehensive digital mapping effort to assist in decisionmaking related to renewable energy activity.

Section 388 clarifies the Secretary's authority to allow an offshore oil and gas structure, previously permitted under the OCSLA, to remain in place after oil and gas activities have ceased in order to allow the use of the structure for other energy and marine-related activities. This authority provides opportunities to extend the life of facilities for non-oil and gas purposes, such as research, renewable energy production, aquaculture, etc., before being removed.

Section 388 does not authorize any leasing, exploration, or development activities for oil or natural gas. Congressional moratoria and administrative withdrawals in effect remain unchanged.

The Energy Policy Act of 2005 created the Coastal Impact Assistance Program (CIAP) by amending Section 31 of the OCSLA. Under the provisions of the Act, the authority and responsibility for the

management of CIAP is vested in the Secretary of DOI. The Secretary has delegated this authority and responsibility to MMS.

Under Section 384, MMS shall disburse \$250 million for each fiscal year (FY) 2007 through 2010 to eligible producing States and coastal political subdivisions (CPS's). The MMS shall determine CIAP funding allocations to States and CPS's using the formulas mandated by the Act (Section 31(b)), which requires a minimum annual allocation of 1 percent to each State and provides that 35 percent of each State's share shall be allocated directly to its CPS's. States eligible to receive funding are Alabama, Alaska, California, Louisiana, Mississippi, and Texas; 67 CPS's are eligible to receive CIAP funding.

The Energy Policy Act of 2005 (Section 31(d)(1)) stipulates that a State or CPS shall use CIAP funds only for one or more of the following authorized uses:

- projects and activities for the conservation, protection, or restoration of coastal areas, including wetland;
- mitigation of damage to fish, wildlife, or natural resources;
- planning assistance and the administrative costs of complying with CIAP;
- implementation of a federally approved marine, coastal, or comprehensive conservation management plan; and
- mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs.

In order to receive CIAP funds, States are required to submit a coastal impact assistance plan (Plan) that MMS must approve prior to disbursing any funds; all funds shall be disbursed through a grant process. Pursuant to the Act, a State must submit its Plan no later than July 1, 2008.

Section 357 of the Act, entitled "Comprehensive Inventory of OCS Oil and Natural Gas Resources," calls for MMS to conduct a comprehensive inventory of the estimated oil and natural gas resources on the OCS, including moratoria areas. The Act requires the use of "any available technology, except drilling, but including 3-D seismic surveys." The first report to Congress was required to be submitted within 6 months of enactment and will be publicly available and updated at least every 5 years. To respond to this statutory directive, MMS published *Report to Congress: Comprehensive Inventory of U.S. OCS Oil and Natural Gas Resources* in February 2006.

3.23. GULF OF MEXICO ENERGY SECURITY ACT OF 2006

On December 20, 2006, President Bush signed into law the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (P.L. 109-432). The GOMESA repeals the Congressional moratorium on certain areas of the GOM, places a moratorium on other areas in the GOM, and increases the distribution of offshore oil and gas revenues to coastal states.

The GOMESA defines two areas in the GOM—the 181 Area and the 181 South Area. Approximately 2 million ac of the 181 Area are located in the CPA. Because this portion was not previously under moratorium, it was included in the CPA proposed actions analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007-2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222, Final Environmental Impact Statement* (USDO, MMS, 2007a) and *Gulf of Mexico OCS Oil and Gas Lease Sales: 2009-2012, Central Planning Area Sales 208, 213, 216, and 222; Western Planning Area Sales 210, 215, and 218, Final Supplemental Environmental Impact Statement* (USDO, MMS, 2008). The 181 Area and 181 South Area were available for lease starting with CPA Sale 205 held on October 3, 2007. The remaining portion of the 181 Area is approximately 500,000 ac located in the EPA. The MMS published a Final Supplemental EIS in October 2007 on this eastern portion of the 181 Area, and it was offered in EPA Sale 224 on March 19, 2008.

The other area GOMESA defined is referred to as the 181 South Area. This area is located in what is now the CPA and is approximately 5.8 million ac. With the exception of 1.5 million ac beyond the U.S. EEZ, the CPA sale area was expanded to include the remaining 4.3 million ac of the 181 South Area for CPA Sale 208 held in 2009, and proposed CPA Sales 213 (2010), 216 (2011), and 222 (2012). While GOMESA repealed the Congressional moratorium on the 181 South Area in December 2006, MMS

decided, because of the limited geological and geophysical data available to industry and the limited environmental review for this area, it would have been premature to offer this area prior to CPA Sale 208 held in March 2009.

The GOMESA establishes a moratorium on leasing, preleasing, and other activities in the following areas until June 30, 2022:

- the area within 125 mi of the State of Florida in the EPA;
- the 181 Area in the CPA that is within 100 mi of the State of Florida; and
- the area east of the Military Mission Line.

The GOMESA also mandates MMS provide an option to exchange existing leases located in the unavailable areas listed above for leases in the available areas of the GOM.

Prior to GOMESA, affected States received recurring annual disbursements of 27 percent of royalty, rent, and bonus revenues received within each State's 8(g) zone. Beginning in FY 2007, and thereafter, Gulf producing States (i.e., Texas, Louisiana, Mississippi, and Alabama) began receiving 37.5 percent of revenue from new leases issued in the 181 Area and 181 South Area. Beginning in FY 2016, and thereafter, Gulf producing States will receive 37.5 percent from new leases in the existing areas available for leasing. The remaining 50 percent and 12.5 percent of the total revenues would be distributed to the U.S. Treasury and the Land and Water Conservation Fund, respectively.

3.24. MARINE DEBRIS RESEARCH, PREVENTION, AND REDUCTION ACT

The Marine Debris Research, Prevention, and Reduction Act (P.L. 109-449) was enacted in December 2006. The purposes of this Act are (1) to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety; (2) to reactivate the Interagency Marine Debris Coordinating Committee; and (3) to develop a Federal marine debris information clearinghouse. The Act established, within NOAA and USCG, a Marine Debris Prevention and Removal Program to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety.

Under the NOAA program, the Administrator shall (1) in consultation with relevant Federal agencies, undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources and navigation safety; (2) improve efforts to reduce adverse impacts of lost and discarded fishing gear on living marine resources and navigation safety; (3) undertake outreach and education of the public and other stakeholders, such as the fishing industry, fishing gear manufacturers, and other marine-dependent industries, and the plastic and waste management industries, on sources of marine debris, threats associated with marine debris and its adverse impacts on the marine environment and navigational safety, including outreach and education activities through public-private initiatives; and (4) acting through the Program, enter into cooperative agreements and contracts and provide financial assistance in the form of grants for projects to accomplish the purpose set forth in the Act.

Under the USCG program, the Commandant, in consultation with the Interagency Committee, shall (1) take action to reduce violations of and to improve implementation of MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) with respect to the discard of plastics and other garbage from vessels; (2) take actions to cost-effectively monitor and enforce compliance with MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), including through cooperation and coordination with other Federal and State enforcement programs; (3) take actions to improve compliance with requirements under MARPOL Annex V and Section 6 of the Act to Prevent Pollution from Ships (33 U.S.C. 1905) that all U.S. ports and terminals maintain and monitor the adequacy of receptacles for the disposal of plastics and other garbage, including through promoting voluntary government-industry partnerships; (4) develop and implement a plan, in coordination with industry and recreational boaters, to improve ship-board waste management, including recordkeeping, and access to waste reception facilities for ship-board wastes; (5) take action to improve international cooperation to reduce marine debris; and (6) establish a voluntary reporting for commercial vessel operators and recreational boaters to report incidents of damage to vessels, disruption of navigation

caused by marine debris, and observed violations of laws and regulations relating to the disposal of plastics and other marine debris.

Nothing in this Act supersedes or limits the authority of the Secretary of the Interior under the OCSLA (43 U.S.C. 1331 et seq.).

3.25. AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978

The American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996) establishes the policy of the Federal Government “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”

3.26. FEDERAL AVIATION ACT OF 1958

The Federal Aviation Act of 1958 (49 U.S.C. 44718, 14 CFR 77) requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the Federal Aviation Administration, as necessary, to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

3.27. MIGRATORY BIRD TREATY ACT OF 1918

The Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712), and Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” (January 10, 2001), require that Federal agencies taking actions likely to negatively affect migratory bird populations enter into a Memoranda of Understanding with FWS. The Memoranda of Understanding ensures that environmental reviews mandated by NEPA evaluate the effects of agency actions on migratory birds, with emphasis on species of concern.

3.28. SUBMERGED LANDS ACT OF 1953

The Submerged Lands Act of 1953 (43 U.S.C. 1301-1315 *et seq.*) grants States title to all submerged navigable lands within their historical boundaries and the natural resources on or within those lands seaward to 3 nmi (3.5 mi; 5.6 km) from the coastline. Texas and the western Gulf Coast of Florida remain the only states to have boundaries that extend farther than 3 nmi.

3.29. 49 U.S.C. 44718: STRUCTURES INTERFERING WITH AIR COMMERCE

The Federal Aviation Administration’s (FAA’s) authority to promote the safe and efficient use of the navigable airspace, whether concerning existing or proposed structures, is predominately derived from 49 U.S.C. 44718. The regulations at 14 CFR 77, “Objects Affecting Navigable Airspace,” were adopted to establish notice criteria for proposed construction or alteration that would protect aircraft from encountering unexpected structures. These regulations apply to structures located within any state, territory, or possession of the U.S., within the District of Columbia, or within territorial waters (13.8 mi; 22.2 km) surrounding such states, territories, or possessions.

Any vertical structure greater than 200 ft (61 m) in height must have FAA approval to avoid or minimize obstruction to navigable airspace. The height of individual wind turbine generators would exceed this 200-ft (61-m) threshold (overall height of 440 ft [134 m] mean sea level) and, therefore, would require FAA-approved lighting/markings.

3.30. U.S. COAST GUARD REGULATIONS

Pursuant to 33 CFR 66 Subpart 66.01 and under provisions of 46 U.S.C. and 33 U.S.C. 30, the USCG has safety and regulatory jurisdiction over projects located in navigable waters of the United States. The proposed wind turbine generators constitute a fixed structure in navigable waters of the U.S., which requires private aids to navigation marking. All wind turbine generators and the electrical service

platforms are subject to USCG review for authorization to mark and light wind turbine generators and electrical service platforms.

3.31. MARKING OF OBSTRUCTIONS

The Marking of Obstructions (14 U.S.C. 86) was enacted in January 2004. The USCG may mark, for the protection of navigation, any sunken vessel or other obstruction existing on the navigable waters or waters above the continental shelf of the U.S. in such manner and for so long as, in his judgment, the needs of maritime navigation require. The owner of such obstruction shall be liable to the U.S. for the cost of such marking until such time as the obstruction is removed or its abandonment legally established or until such earlier time as the Coast Guard may determine.

3.32. EXECUTIVE ORDER 11988: FLOODPLAIN MANAGEMENT

Executive Order 11988 requires Federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, “each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities” for the following actions: acquiring, managing, and disposing of Federal lands and facilities; providing federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use, including but not limited to, water and related land resources planning, regulation, and licensing activities.

3.33. EXECUTIVE ORDER 11990: PROTECTION OF WETLANDS

Executive Order 11990 (42 CFR 26961), signed by President Jimmy Carter on May 24, 1977, establishes that each Federal agency shall provide leadership and take action to minimize the destruction, loss, or degradation of wetlands; and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities. This Executive Order applies to the following Federal activities: managing and disposing of Federal lands and facilities; providing federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources planning, regulating, and licensing activities.

3.34. EXECUTIVE ORDER 12114: ENVIRONMENTAL EFFECTS ABROAD

On January 14, 1979, President Jimmy Carter signed Executive Order 12114 (44 FR 1957). This Executive Order requires that responsible officials of Federal agencies be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the U.S., including Antarctica.

3.35. EXECUTIVE ORDER 12898: ENVIRONMENTAL JUSTICE

The environmental justice policy, based on Executive Order 12898 of February 11, 1994, requires agencies to incorporate analysis of the environmental and health effects into NEPA documents. The analysis addresses the characteristics of race, ethnicity, and poverty status of populations in areas potentially affected by the proposed Federal action. The MMS’s existing NEPA process invites participation by all groups and communities in the development of its proposed actions, alternatives, and potential mitigation measures. Scoping and review for the NEPA documents are an open process that provides an opportunity for all participants, including minority and low-income populations, to raise new expressions of concern that can be addressed in the document. Impacts to socioeconomic conditions, commercial fisheries, air quality, and water quality are considered in the analysis of effects of the

proposed actions on local populations or resources used by local groups, including minority and low-income groups.

3.36. EXECUTIVE ORDER 13007: INDIAN SACRED SITES

President Bill Clinton issued Executive Order 13007 on Indian Sacred Sites on May 24, 1996. This Executive Order requires Federal land managing agencies to accommodate access to and ceremonial use of sacred Indian sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely affect, sacred sites. Federal agencies can use Section 106 process of the NHPA to ensure that the requirements of Executive Order 13007 are fulfilled. While a Federal agency is not required to integrate the requirements of Executive Order 13007 in the Section 106 review process, it may be beneficial for both the agency and the Tribe to do so.

Sacred sites are defined in Executive Order 13007 as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.” This promotes greater protection for the physical integrity of such sites and maintains the confidentiality of such sites, where appropriate.

3.37. EXECUTIVE ORDER 13089: CORAL REEF PROTECTION

President Bill Clinton issued Executive Order 13089 on Coral Reef Protection on June 11, 1998, as part of the Monterey National Ocean Conference. This Executive Order establishes the interagency U.S. Coral Reef Task Force, co-chaired by the Secretary of the Interior and the Secretary of Commerce through the Administrator of the National Oceanic and Atmospheric Administration. The U.S. Coral Reef Task Force is charged with developing and implementing a comprehensive program of research and mapping to inventory, monitor, and “identify the major causes and consequences of degradation of coral reef ecosystems.” The first meeting of the Task Force was held on October 19-21, 1998, at Biscayne Bay National Park.

This Executive Order also directs Federal agencies to expand their own research, preservation, and restoration efforts. The MMS carries out the mission of Executive Order 13089 by supporting directed research and developing proper mitigation measures (i.e., the Topographic Features Stipulation and Live Bottom (Pinnacle Trend) Stipulation) in order to protect these fragile and biologically rich ecosystems.

The purpose of the Topographic Features Stipulation is to protect the benthic habitat for coral reef community organisms. These communities could be severely and adversely impacted by oil and gas activities taking place on or near these communities. The stipulation establishes No Activity Zones and other operational restrictions.

The Live Bottom (Pinnacle Trend) Stipulation protects the “live-bottom areas,” including corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography. A bathymetry map is required prior to exploration and development activities. If the live bottom might be adversely impacted by the proposed activity, the Regional Director will require the lessee to undertake additional measures, such as relocating or monitoring the operations, to assess the impact of the activity on the live bottom.

3.38. EXECUTIVE ORDER 13175: CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

This Executive Order requires Federal agencies to coordinate and consult with Indian tribal governments whose interests might be directly and substantially affected by activities on federally administered lands. On November 5, 2009, President Obama directed Federal agencies to develop plans to implement Executive Order 13175.

3.39. EXECUTIVE ORDER 13186: RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

This Executive Order requires Federal agencies taking actions with a measurable negative effect on migratory bird populations to develop and implement with FWS a Memorandum of Understanding that promotes the conservation of migratory bird populations. On June 4, 2009, MMS and FWS completed a Memorandum of Understanding to define specific areas in which cooperation between the agencies will substantially contribute to the conservation and management of migratory birds and their habitats.

4. CONCLUSIONS

The MMS consults with various Federal departments and agencies that have authority to govern and maintain ocean resources pursuant to other Federal laws. The OCS leasing process for oil, natural gas, or renewable energy can be a complex process. Federal laws mandate the OCS leasing program (i.e., the OCSLA) and the environmental review process (i.e., NEPA). Regulatory requirements are coordinated with Federal, State, and local agencies to encourage orderly, safe, and environmentally responsible development of energy sources on the OCS.

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The Department of the Interior Mission

As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historical places; and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The Department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.



The Minerals Management Service Mission

As a bureau of the Department of the Interior, the Minerals Management Service's (MMS) primary responsibilities are to manage the mineral resources located on the Nation's Outer Continental Shelf (OCS), collect revenue from the Federal OCS and onshore Federal and Indian lands, and distribute those revenues.

Moreover, in working to meet its responsibilities, the **Offshore Minerals Management Program** administers the OCS competitive leasing program and oversees the safe and environmentally sound exploration and production of our Nation's offshore natural gas, oil and other mineral resources. The MMS **Minerals Revenue Management** meets its responsibilities by ensuring the efficient, timely and accurate collection and disbursement of revenue from mineral leasing and production due to Indian tribes and allottees, States and the U.S. Treasury.

The MMS strives to fulfill its responsibilities through the general guiding principles of: (1) being responsive to the public's concerns and interests by maintaining a dialogue with all potentially affected parties and (2) carrying out its programs with an emphasis on working to enhance the quality of life for all Americans by lending MMS assistance and expertise to economic development and environmental protection.