

Jurisdictional issues surrounding competing marine resource uses:

Offshore LNG, aquaculture and wind power

with a bonus review of:

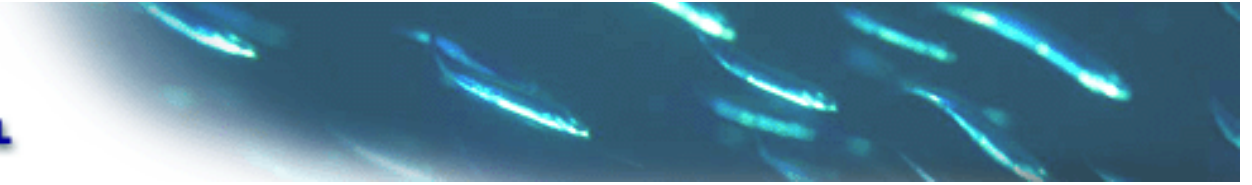
- Energy Policy Act of 2005***
- Marine Aquaculture Act of 2005***

Aug 22, 2005

Portland, ME - Ecosystems Ctte

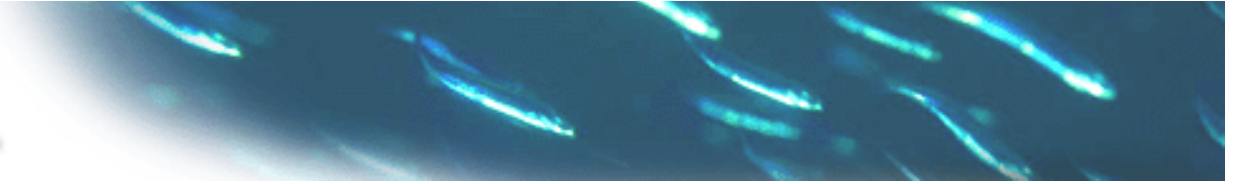
Chad Demarest

NEFMC Ecosystems Project Leader



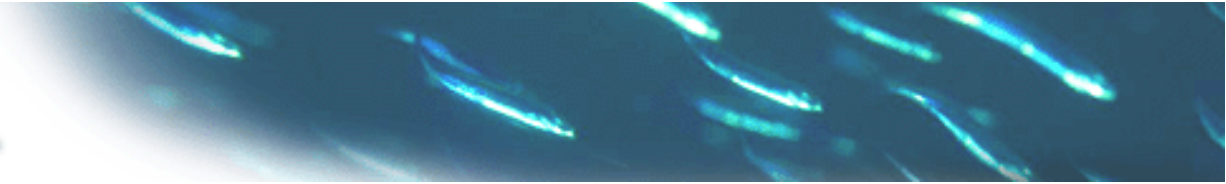
Presentation Overview

- **Purpose, scope**
- **Offshore LNG terminals**
- **Offshore aquaculture**
- **Offshore wind power generation**

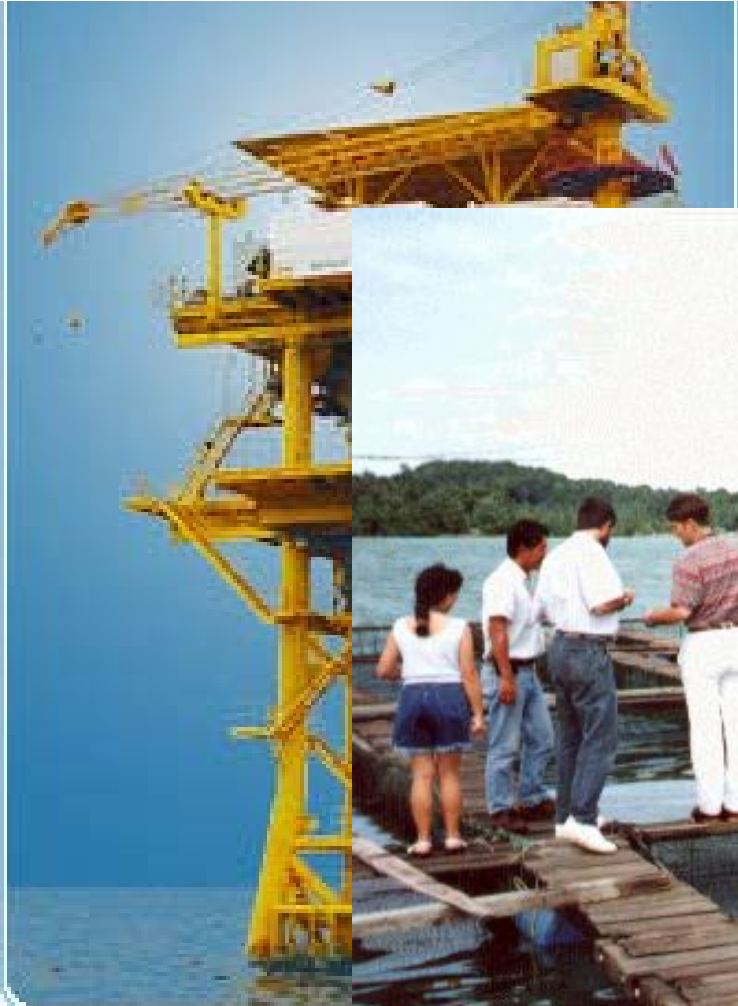


Purpose

- **Establish background info and regulatory framework for selected competing marine resource users**
- **Illustrate complexity of offshore marine resource management**
- **Provide insight into potential for interagency cooperation (wrt ecosystem management principles)**



Scope





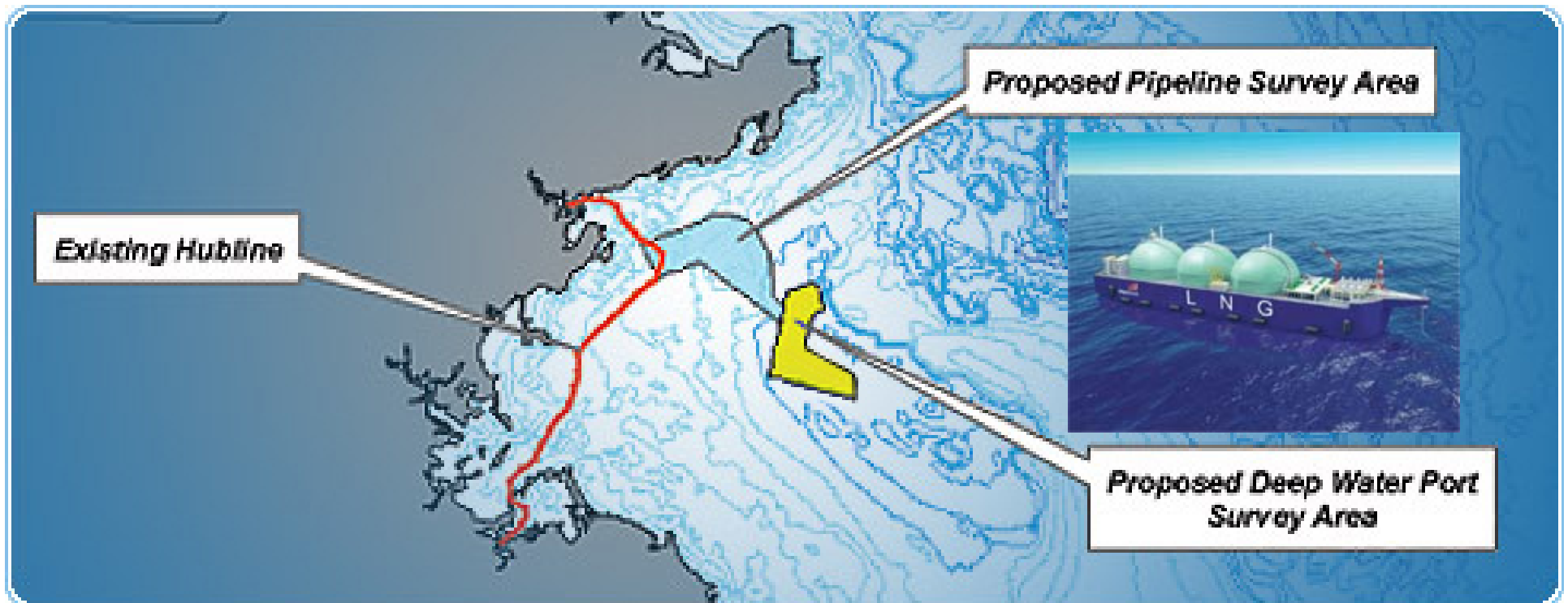
Bonus coverage

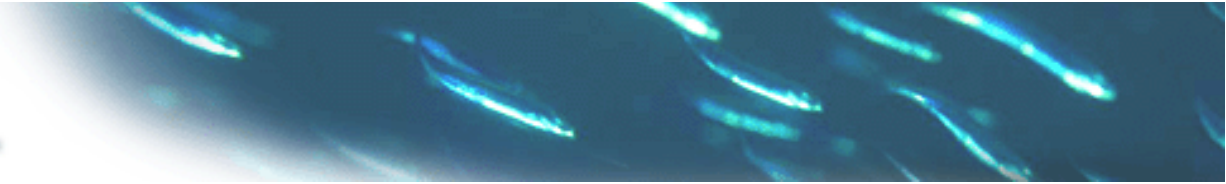


- **Energy Policy Act of 2005**
- **Marine Aquaculture Act of 2005**



Offshore LNG

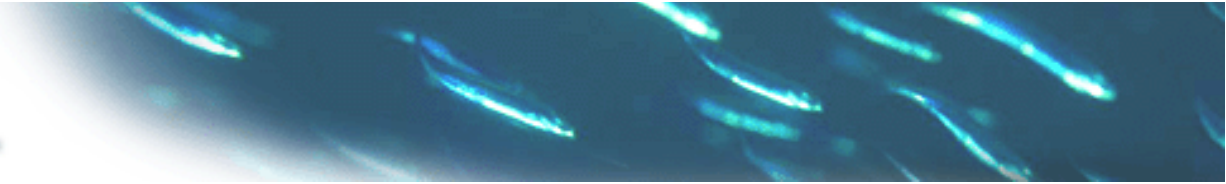




Regulatory framework

Offshore LNG

- DWPA, as amended in 2002, gives “location, ownership, construction, and operation of deepwater ports” authority to DOT
 - USCG
 - US MARAD
- Deepwater ports defined as:
“...any fixed or floating manmade structure other than a vessel...located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State”



Regulatory framework

Offshore LNG

- “Deepwater MOU”
 - U.S. Department of Commerce (DOC)
 - National Oceanic and Atmospheric Administration (NOAA)
 - National Marine Fisheries Service (NOAA Fisheries Service)
 - National Ocean Service (NOS)
 - U.S. Department of Defense (DOD)
 - (Installations and Environment) Utilities and Energy
 - Secretary of the Army, U.S. Army Corps of Engineers (COE)
 - U.S. Department of Energy (DOE)
 - Office of Fossil Energy
 - U.S. Department of Homeland Security (DHS)
 - U.S. Coast Guard (USCG)
 - U.S. Department of the Interior (DOI)
 - Minerals Management Service (MMS)
 - U.S. Fish and Wildlife Service (FWS)
 - U.S. Department of State (DOS)
 - U.S. Department of Transportation (DOT)
 - Maritime Administration (MARAD)
 - Research and Special Programs (RSPA)
 - U.S. Environmental Protection Agency (EPA)
 - Federal Energy Regulatory Commission (FERC)
 - Council on Environmental Quality (CEQ)



Regulatory framework

Offshore LNG

- Adjacent state approval
 - Adjacent coastal state (ACS) defined as a state that:
 - (A) “would be directly connected by pipeline to a deepwater port as proposed in an application, or
 - (B) would be located within 15 miles of any such proposed deepwater port.”
- No license issued w/out approval fm governor of designated ACS



Current projects

Offshore LNG

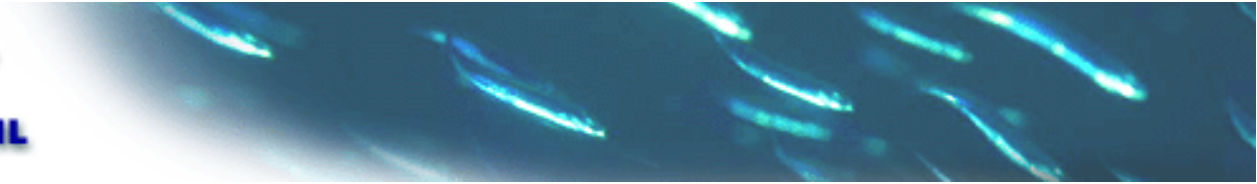
- Three approved as of July 2005:
 - Gulf Gateway Energy Bridge (Excelerate)
 - 116 miles south of Louisiana
 - Operational April 2005
 - Open loop system
 - Port Pelican (ChevronTexaco)
 - 36 miles south of Louisiana
 - Gulf Landing (Shell)
 - 38 miles south of Louisiana



Proposed projects

Offshore LNG

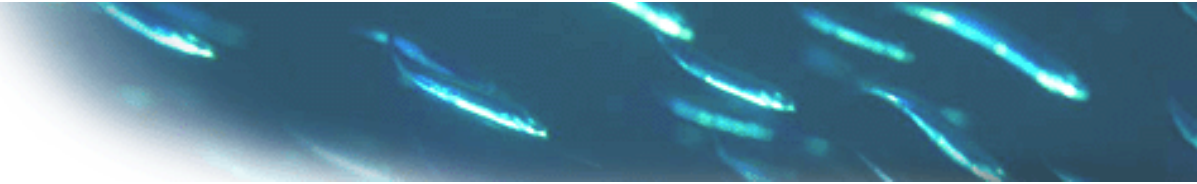
- Seven under review as of July 2005:
 - Northeast Gateway - Gloucester, MA
 - Cabrillo Port – Ventura, CA
 - Clearwater Port – Southern CA
 - Main Pass Energy Hub – AL, LA, MS
 - Compass Port – AL, MS
 - Pearl Crossing – LA
 - Beacon Port – LA



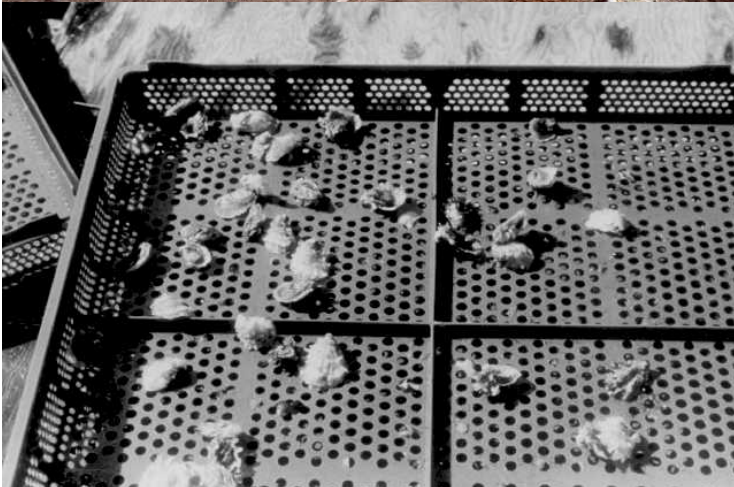
Energy Policy Act of 2005

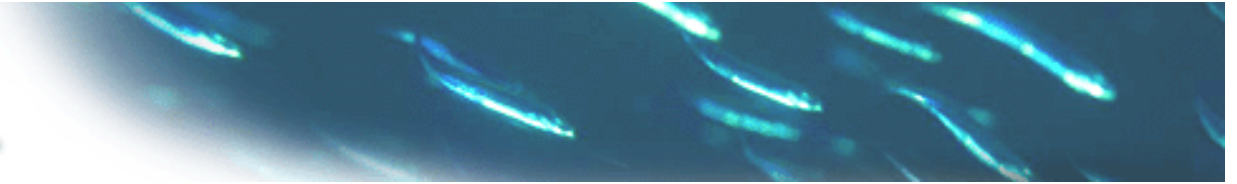
Offshore LNG

- Expands federal role in permitting and siting facilities “onshore and in state waters”
- FERC assumes lead agency
 - “Exclusive” authority in siting, construction and operation of LNG facilities
 - Most likely (though not expressly) overrides local zoning and non-federal laws, if in conflict



Mariculture



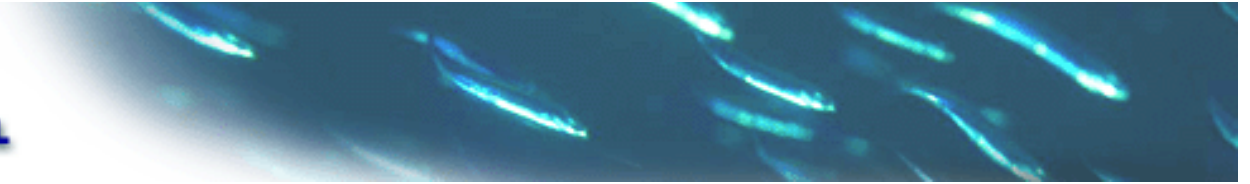


Regulatory Framework

Aquaculture

National Aquaculture Act of 2005

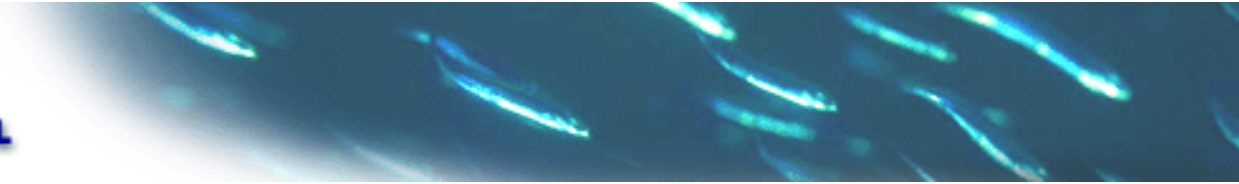
- Provides structure (previously absent) to permitting, siting and operation of offshore aquaculture facilities
- Makes DOC lead agency
- Exempts facilities from MFCMA



Regulatory Framework

Aquaculture

- While exempted from MFCMA, DOC must still:
 - Ensure that offshore aquaculture does not interfere with MFCMA conservation and management measures for wild stocks
 - Consult with RFMC's prior to issuing permits



Regulatory Framework

Aquaculture

“The Secretary shall consider risks to and impacts on natural fish stocks, marine ecosystems, biological, chemical and physical features of water quality, habitat, marine mammals, other forms of marine life, birds, endangered species, and other features of the environment, as identified by the Secretary in consultation as appropriate with other Federal agencies.”



Past projects

Aquaculture

Norwegian Fish Farm, Inc (1988)

- Proposed Atlantic Salmon pens
 - 47 sq miles
 - 27 miles off of Gloucester
 - Hoped to produce 47 million lbs/year
- Army COE issued, then retracted permit in 1990 due to CLF lawsuit
- Project dropped in early 1990's



Past projects

Aquaculture

SeaFish (1990's)

- Used retired NG platform in GOM
- Cultivated Red Drum in cages
- Incurred losses due to storms and wave damage
- Ceased operation in mid 1990's

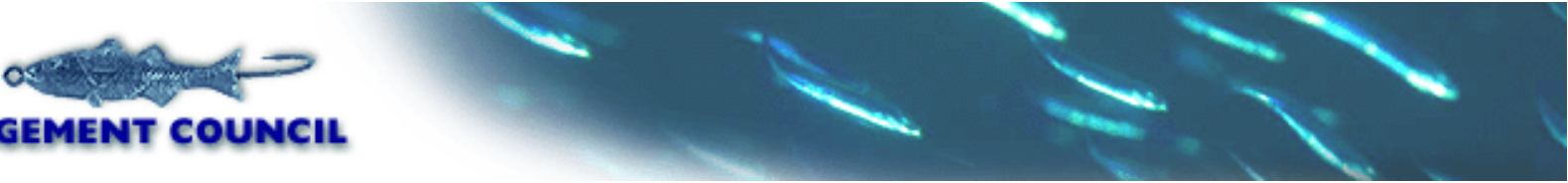


Past projects

Aquaculture

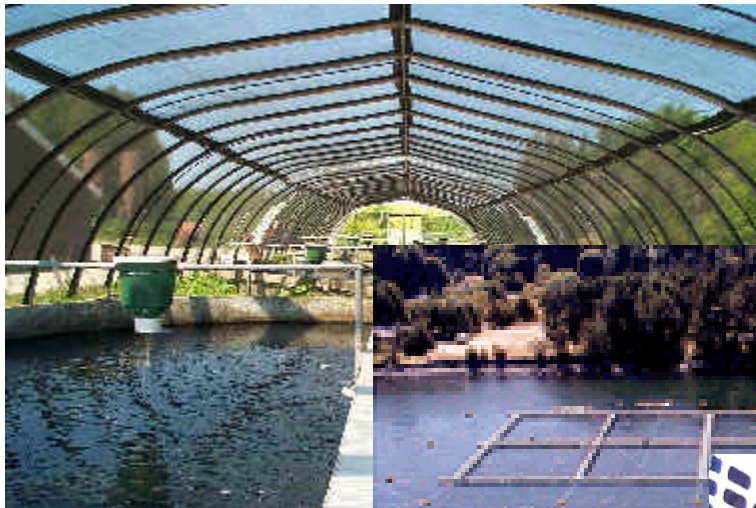
SeaStead (1990's)

- Army COE issued permit in 1995
- 12 miles southwest of Martha's Vineyard
- NEFMC authorized a site in close proximity; amended Scallop FMP
- No official closure on project



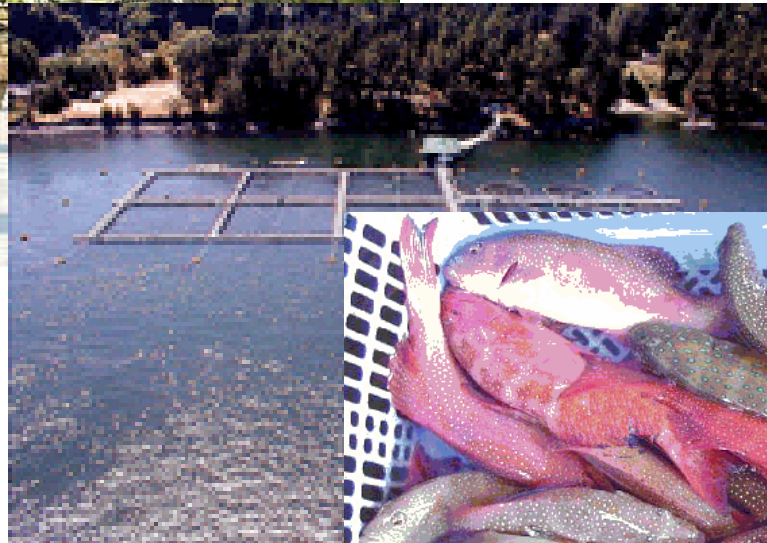
Current/proposed projects

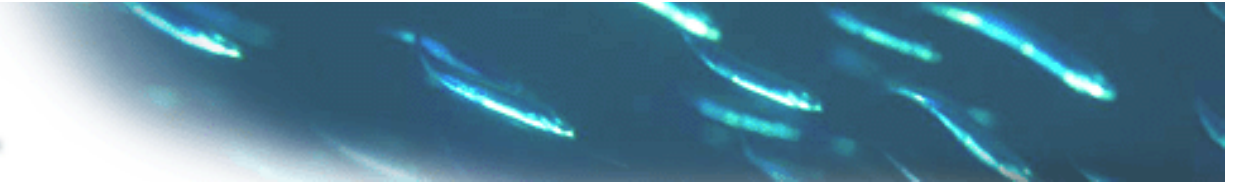
Aquaculture



As of Aug, '05...

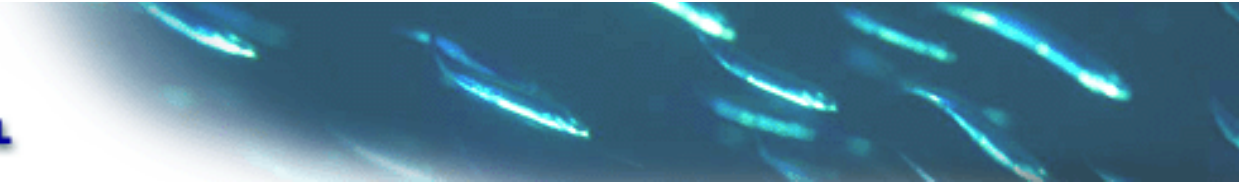
None





Windfarms

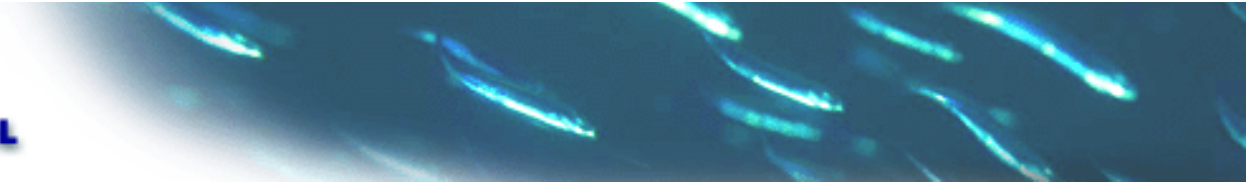




Regulatory framework

Windfarms

- Army COE has assumed lead under the Rivers and Harbors Act
- RHA typically applies to 3nm
- Outer Continental Shelf Lands Act extends COE jurisdiction to the outer continental shelf
- Must conduct both a NEPA analysis and a “public interest review” under RHA prior to issuing permits



Regulatory framework

Windfarms

- Army COE must consult:
 - NOAA Fisheries Service (MFCMA, MMPA)
 - Fish and Wildlife Service (MBTA)
 - EPA (Clean Water Act)
- Army COE must obtain “affected coastal state’s” consistency certification
 - Activity is consistent with the state’s CZMP



Proposed Projects

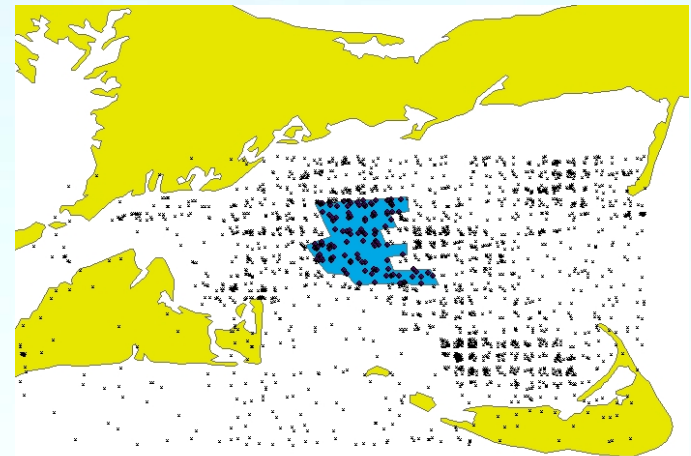


Windfarms



Cape Winds

Long Island
Offshore Wind





NEFMC

Conclusions

- Council may comment on “any activity...[that] may affect the habitat, including the essential fish habitat, of a fishery resource under its authority”
--note that this not restricted to designated EFH
- Council must comment if “the proposed activity “is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority”



NEFMC

Conclusions

- Current situation:
 - Council's not part of "Deepwater MOU"
 - Limited success with comments in Gulf Gateway case
 - No anticipated aquaculture activity in near term
 - Uncertain reception from COE on wind farm impacts
- Going forward:
 - MS Reauthorization language
 - Ecosystem management



General conclusions



Fishery impacts frequently go beyond EFH



General conclusions



Issues are emerging; no blueprint exists



General conclusions



NE has front-row seats for LNG and windfarm



General conclusions



**Hab/Eco and MS Ctte's potential venues for
developing Council policy**