

Jurisdictional issues surrounding competing marine resource uses:

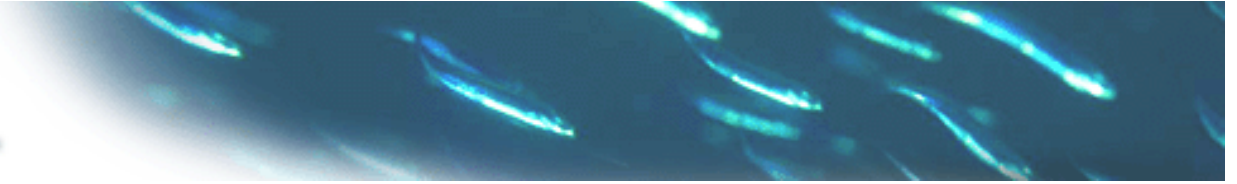
Offshore LNG, aquaculture and wind power

with a bonus review of:

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

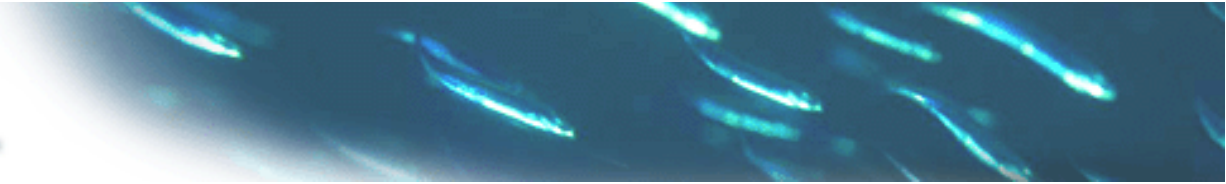
January 27, 2006
SSC/SSAC Joint Meeting

Chad Demarest
Ecosystems Project Leader



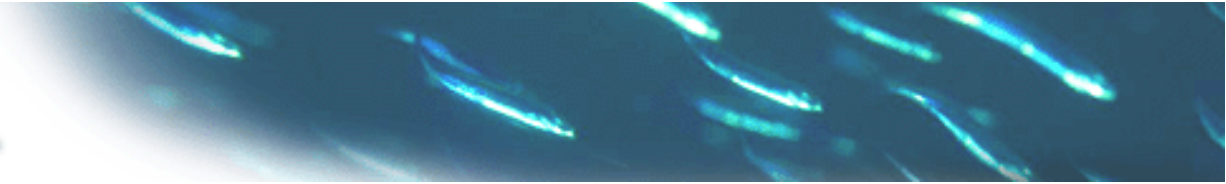
Presentation Overview

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

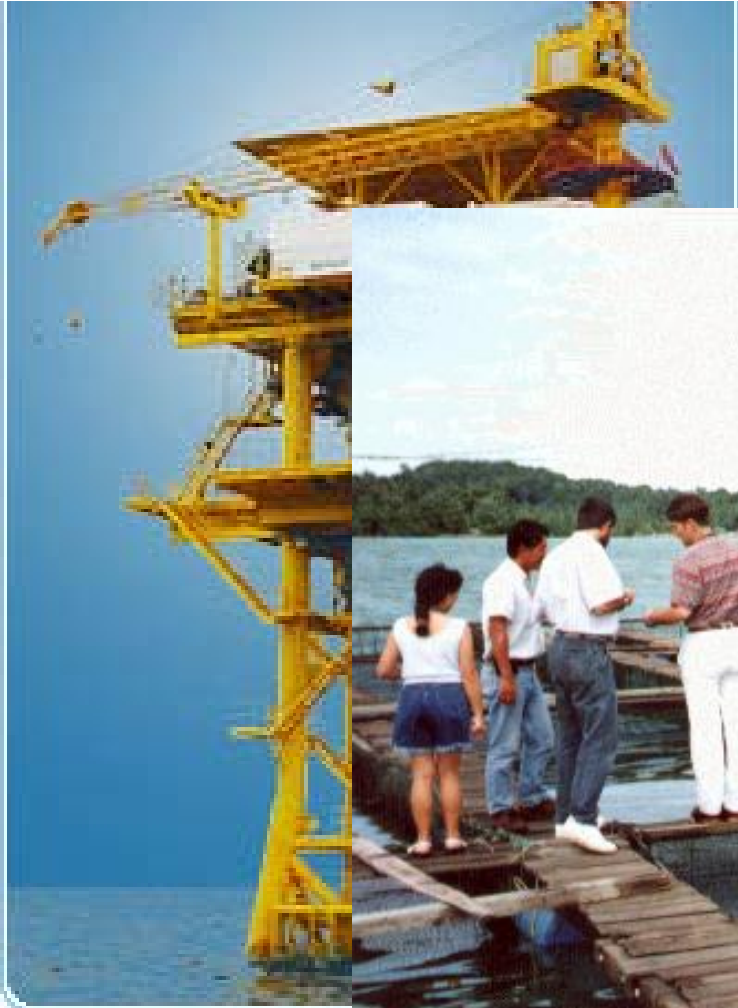


Purpose

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

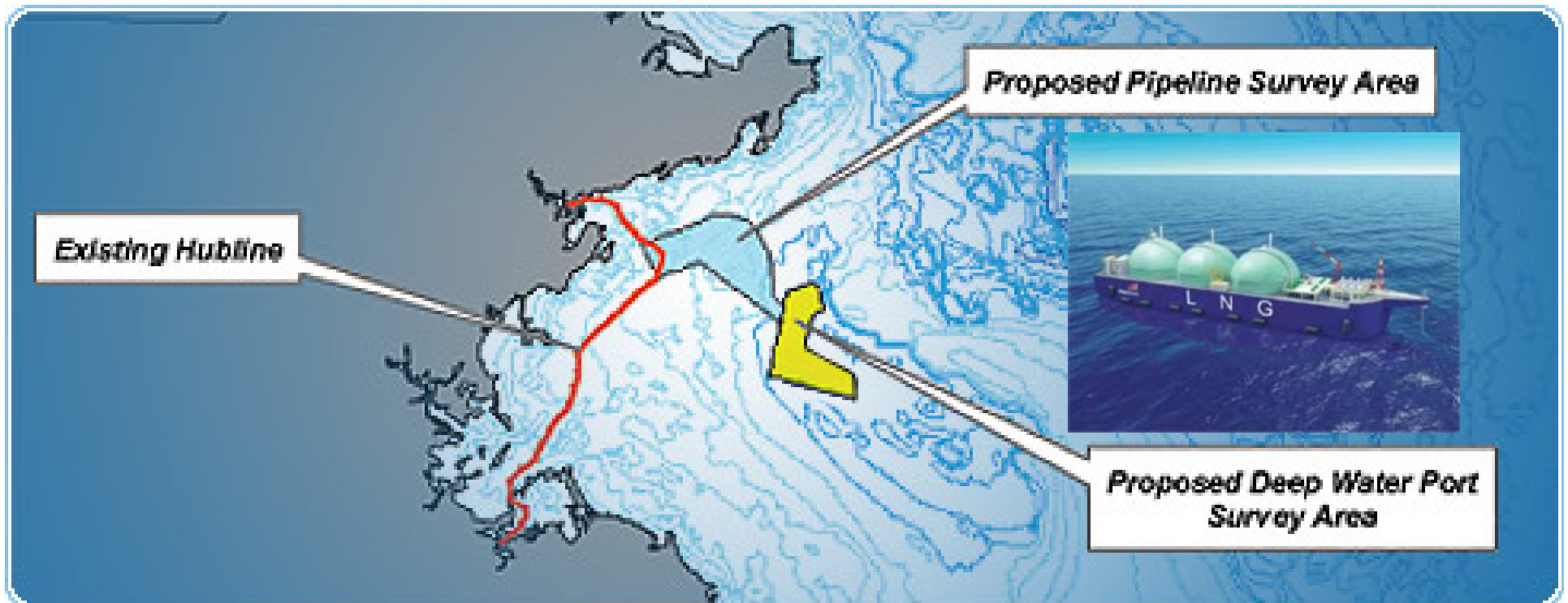


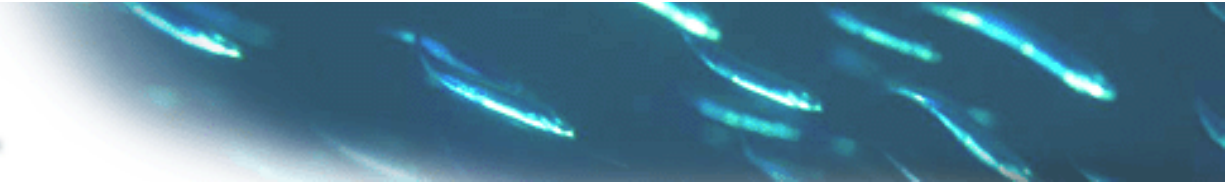
Scope





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

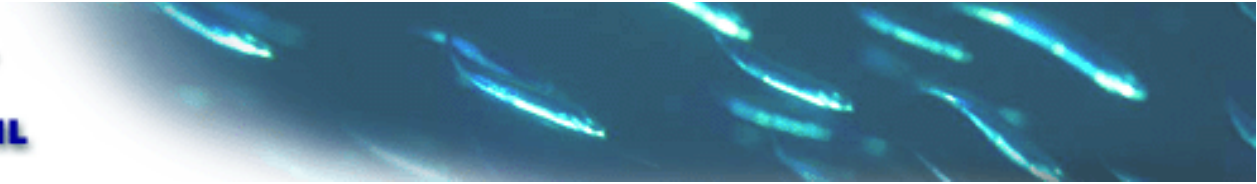
- Three approved as of July 2005:
 - Gulf Gateway Energy Bridge (Excelerate)
 - 116 miles south of Louisiana
 - Operational April 2005
 - Open loop system
 - Port Pelican (ChevronTexaco)
 - 36 miles south of Louisiana
 - Gulf Landing (Shell)
 - 38 miles south of Louisiana



Proposed projects

Offshore LNG

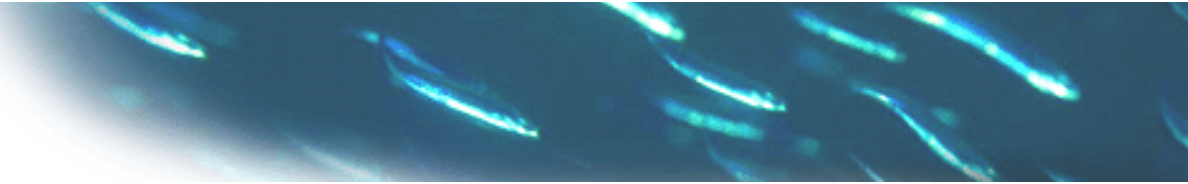
- Seven under review as of July 2005:
 - Northeast Gateway - Gloucester, MA
 - Cabrillo Port – Ventura, CA
 - Clearwater Port – Southern CA
 - Main Pass Energy Hub – AL, LA, MS
 - Compass Port – AL, MS
 - Pearl Crossing – LA
 - Beacon Port – LA



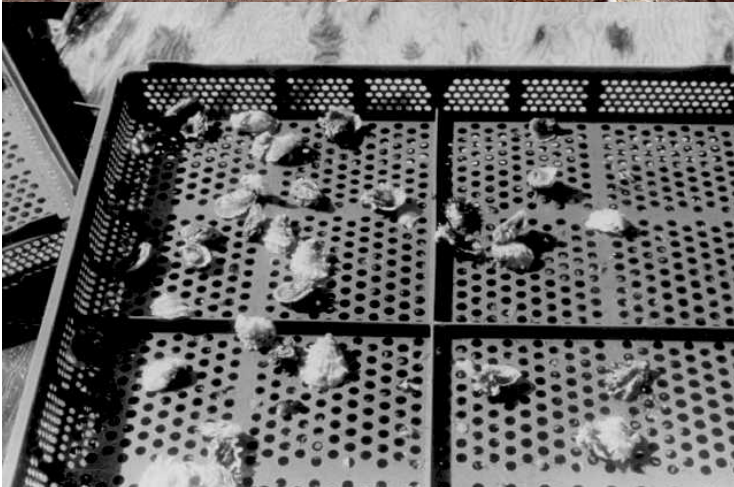
Energy Policy Act of 2005

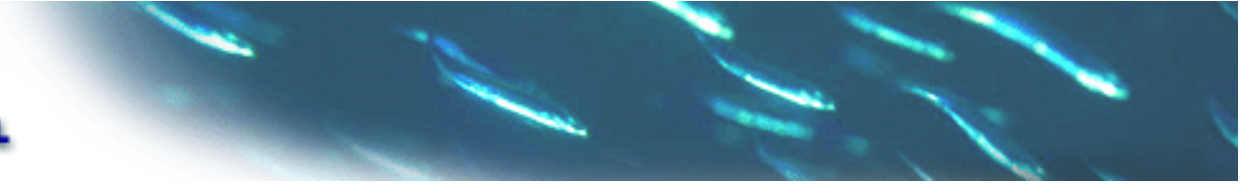
Offshore LNG

- 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



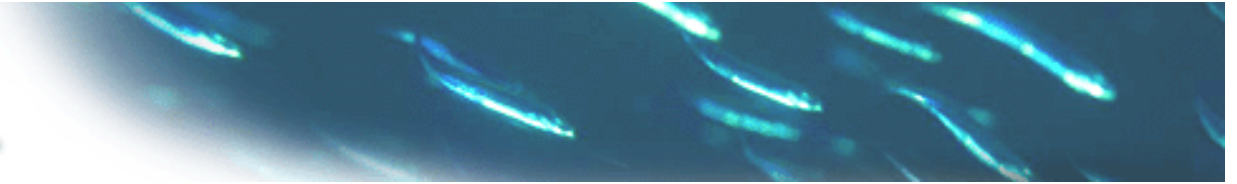


Regulatory Framework

Aquaculture

Multi-agency permitting process not well defined

- Permits required from:
 - NOAA Fisheries
 - COE
 - EPA
 - Fish & Wildlife Service
- NOAA Fisheries lead agency via MFCMC
- COE Sec 10 permits for “obstruction” to navigation
- EPA discharge permits



Regulatory Framework

Aquaculture

Fishery Management Councils:

- Not involved in siting or operation
- Jurisdiction for federally managed species via MFCMA
- FMPs may need to be modified or developed to accommodate



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

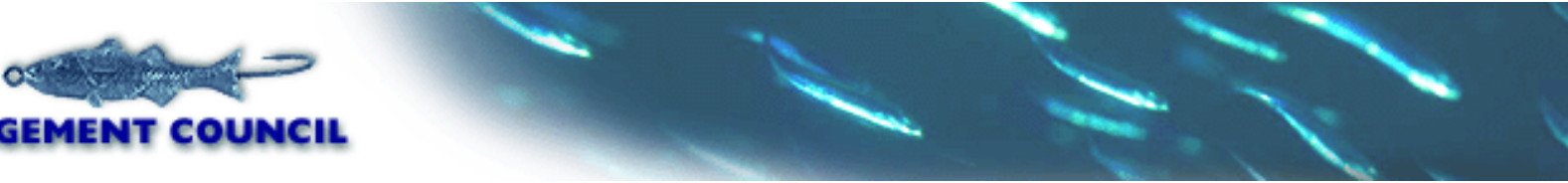


Past projects

Aquaculture

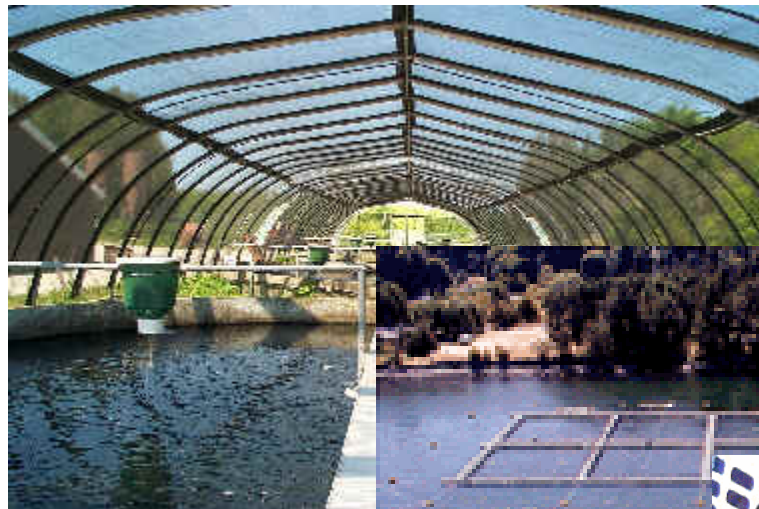
SeaStead (1990's)

- 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



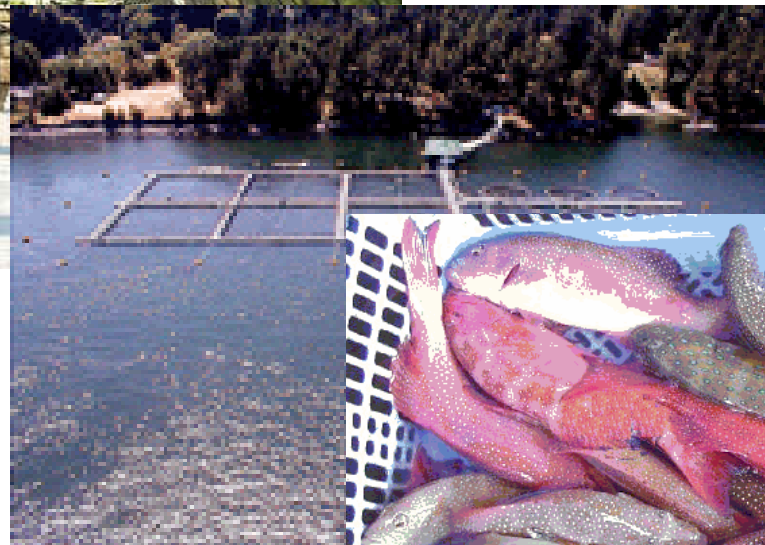
Current/proposed projects

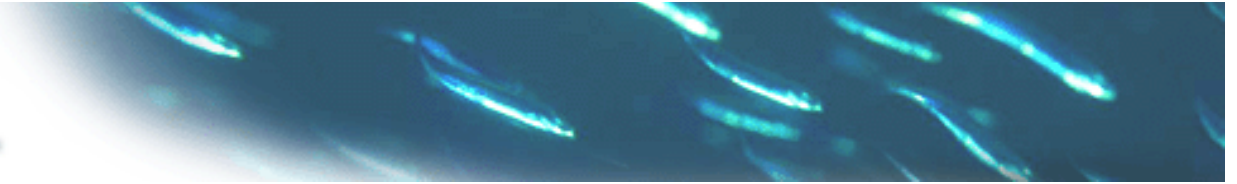
Aquaculture



As of Jan, '06...

None

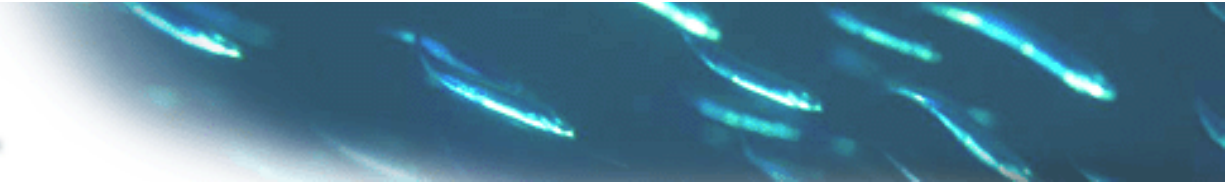




National Aquaculture Act of 2005

Aquaculture

- Would provide structure (currently absent) to permitting, siting and operation of offshore aquaculture facilities
- Would make DOC lead agency
- Would exempt facilities from MFCMA



NAA '05

Aquaculture

While exempted from MFCMA, DOC would still be req'd to:

- Ensure that offshore aquaculture does not interfere with MFCMA conservation and management measures for wild stocks
- Consult with RFMC's prior to issuing permits

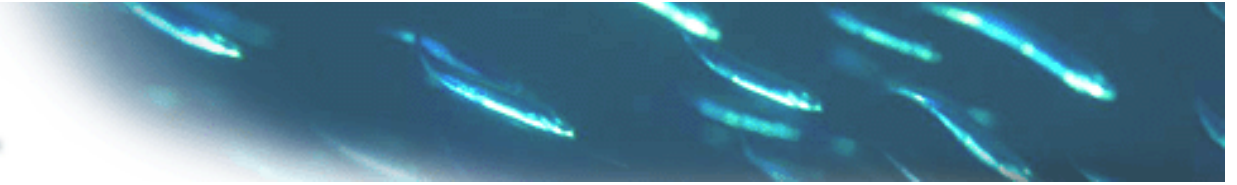


Additional info

Aquaculture

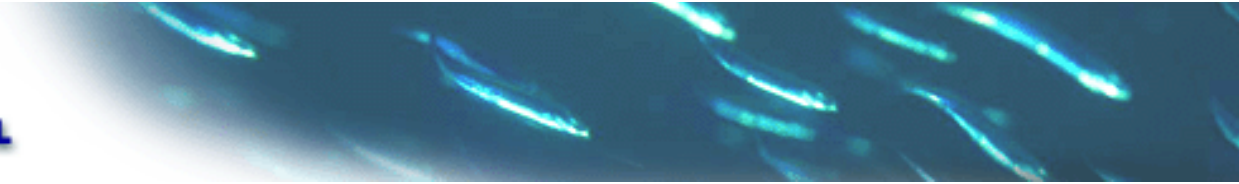
The Energy Policy Act of 2005:

- Gives the Secretary of the Interior (via the MMS) permission to grant a lease on the OCS if:
 - The use is for “authorized marine-related purposes”
 - The structure was previously used for energy-related activities (eg. oil platforms)
- This provision *may* give siting authority to the MMS for aquaculture under this very limited circumstance



Windfarms

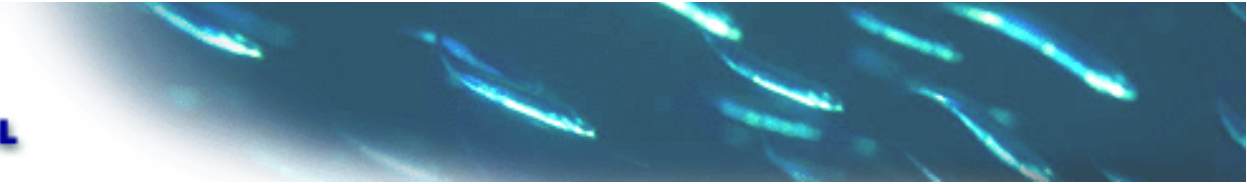




Regulatory framework

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

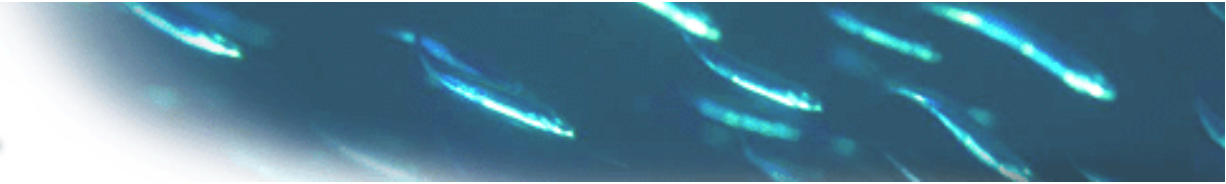


Regulatory framework

Windfarms

Energy Policy Act of 2005:

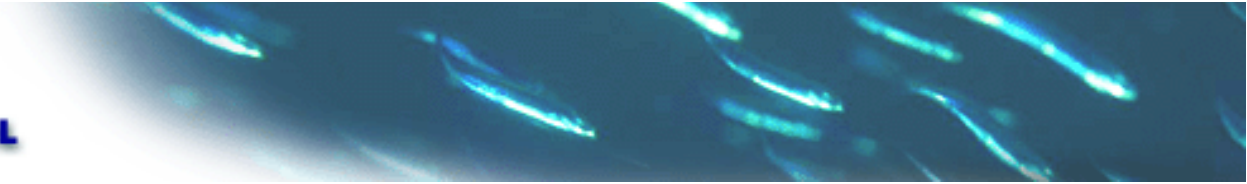
- Gives Secretary of the Interior (via MMS) authority for leases on the OCS for “energy from sources other than oil and gas”
- MMS must consult with USCG/DHS
- Previously, the COE claimed authority under the RHA and the OCSLA
- Section 10 (RHA) permits must still be issued by COE
 - Required “public interest review” in addition to NEPA responsibilities



Regulatory framework

Windfarms

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



Regulatory framework

Windfarms

- MMS:
 - Must consider any other uses of the seabed, “including use for a fishery”
 - Mechanism (eg. NEPA responsibility) for such consideration is unclear
 - No distinction btwn siting (leasing) and operations permits



Proposed Projects

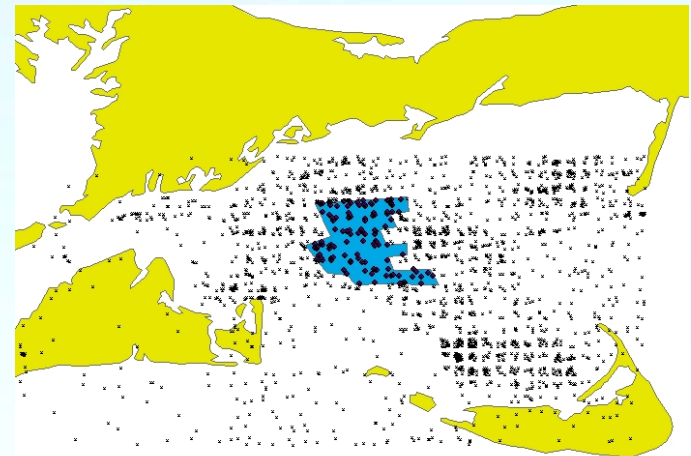


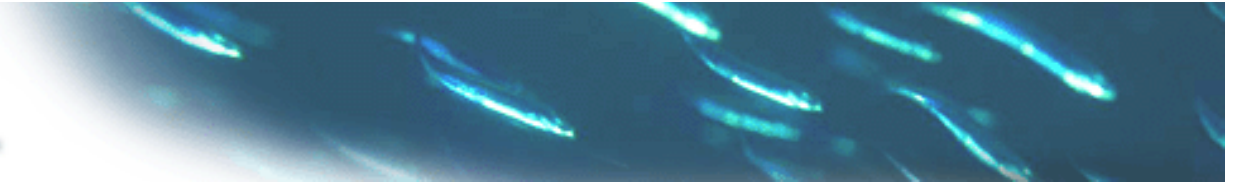
Windfarms



Cape Winds

Long Island
Offshore Wind

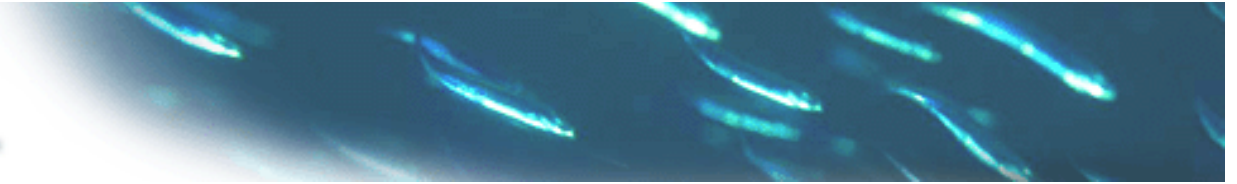




NEFMC

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-based management



Fishery impacts frequently go beyond EFH



Issues are emerging; no blueprint exists

A photograph of an offshore wind farm at sunset. The sky is a deep orange, and the water is dark with shimmering reflections. Three large wind turbines are visible in the foreground, with several smaller vessels in the distance.

NE has front-row seats for LNG and windfarm



**NEFMC interests potentially impacted; we
have a valuable role in the process as an
interested party**

- **Written comments**
- **Scoping involvement**
- **Follow-up**



**Hab/Eco Ctte a potential venue for developing
Council policy and response**



Charge to Cttes

How important to the Council's activities are non-fishing marine resource uses?

To what degree, if any, should the Council seek to become involved in the planning stages (i.e. scoping, hearings, etc) of such projects?