

OPT

OCEAN POWER TECHNOLOGIES

1590 Reed Road
Pennington, NJ 08534 USA
Tel: 609-730-0400 - Fax: 609-730-0404

September 8, 2008

**Subject: Comments to Proposed Rule on Alternative Energy and Alternative
Uses of Existing Facilities on the Outer Continental Shelf
(30 CFR Parts 250, 258, and 290)**

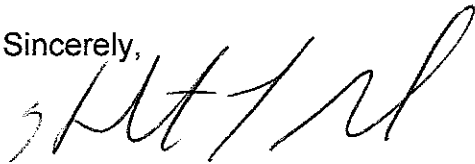
To Whom It May Concern:

Please find the attached comments to your recent draft of the subject document. We have a number of comments which we trust you will give serious consideration during your final draft. As a leader in the wave power industry and a major developer of wave power projects on the west coast, OPT has a working understanding of the licensing requirements to launch and sustain this industry. In your proposed rule we see major issues which will impede the industry's development here in the US and force wave power development elsewhere in the world with more favorable licensing policies. Unfortunately, there will be an associated loss of jobs and economic benefit to the US with this migration.

As we all share the same objective of increasing energy independence and US based "green jobs", OPT is optimistic that an intersection of public policy and private industry developmental needs can be attained in your Final Rule. We are therefore willing to engage in further discussions with MMS at your convenience to this end. Having been successful in striking this balance during our licensing process in Oregon, OPT would be pleased to share our experience with you.

Best wishes.

Sincerely,



Herbert T. Nock
VP Business Development & Marketing

HTN:lms

§285.111 – Environmental Processing Fees

OPT is currently involved in the development of documents and studies in support of its Reedsport OPT Wave Park. OPT is developing a team of experienced internal staff and environmental contractors to develop the FERC license application, a draft Environmental Assessment, a draft Biological Assessment, and an Adaptive Management Plan, and various environmental studies required for obtaining the required permits and licenses for the Reedsport project. OPT strongly suggests that MMS allow companies the option of developing the required environmental documents rather than MMS staff and their contractors develop them for projects. This will allow development companies to use their expertise to manage the environmental studies in a cost effective manner and address the needs of various stakeholders in a timely manner. It will also permit MMS staff to participate in the studies as needed rather than manage them and allow staff to pursue the other responsibilities for developing marine renewable under the proposed regulations. OPT believes that the estimated costs of \$ 3,800,000 for various environmental submittals developed for the Paperwork Reduction Act Analysis would be better managed by developer companies.

§285.113 How this information is used

Some of the information which will be submitted as part of the filings required under this section are proprietary and will include engineering analyses of structures and moorings, operations manuals, and similar proprietary documents. OPT proposes that MMS establish guidelines as to what types of documents may be kept confidential in accordance with this section. Developers may be unclear what information may be kept confidential “except to the extent required by law”. (§285.113(b)).

§285.116 Request for Information

OPT routinely provides public briefings on the status of its technology and would be pleased to respond to requests from the Director for non-confidential information.

§285.201 and §285.230 - .231 – How will MMS issue leases

OPT would suggest that an electronic system be utilized for the notification of lease availability and information requests similar to the fed biz ops website in addition to the Federal Register. This electronic approach will reduce the paperwork burden for developer companies.

§285.203 – With Whom will MMS consult before issuance of a lease?

Developer companies engaging in detailed consultations with Federal and State Agencies and other stakeholders in the absence of a non-disclosure statement or other means to protect their legitimate business interests places a significant burden on developers. Unlike FERC which has a “first to file” approach, the proposed MMS approach would open a company’s business strategy to a wide audience without the benefit of protecting the information and the preliminary site workup the company has developed. While consultations may be held in a general way, the consultations which OPT and its subsidiaries have conducted with stakeholders have been quite detailed to provide them the best possible information. OPT’s subsidiaries were able to address stakeholder’s concerns and conduct education because the site had been filed by OPT. OPT believes that conducting detailed briefings with stakeholders regarding this emerging renewable energy has led to the successes we have experienced in this process. OPT has been able to do this in a thoughtful, proactive manner because of the permitting process which we have been operating under in the Territorial Sea.

§285.206 – Lease Size

OPT's technology does not lend itself well to the proposed 3 nm x 3 nm standard "squares" proposed in the regulations. A marine renewable project using OPT's PowerBuoy system is typically laid out in rectangular fashion with the approximate ratio of 25:1 length to width ratio. The longer side of the rectangular layout is typically perpendicular to the incident wave energy. Under the proposed regulations, a project using OPT's technology might cross a portion of two or more contiguous OCS blocks. This same issue would also apply to the non-competitive lease process.

§285.211 – What is the process for competitive issuance of leases & §285.230 – May I request a lease if there is no call?

Most of the project development activity will be performed in conjunction with or anticipation of an RFP from a utility or other qualified buyer. The response timeframes range on the order of 90 days or less from formal announcement of the RFP to the bid submittal date. Developers will be hard pressed to respond to the bid requirements and also procure the necessary control of the site to ensure that their bid demonstrates "control of the site". "Control of the site" is a key factor when a utility evaluates a developer's bid. Failure to demonstrate "control of the site" by lease, contract, permit, or other means will result in the bid being determined as non-compliant and not considered further. Most utilities do not accept supplemental documents after the bids are due in accordance with the IRP and RFP procedural requirements of their respective Utility Commissions. It is unclear how the process described by MMS will permit developers to respond to these RFPs in a timely manner.

§285.221 – What bidding systems may MMS use for commercial and limited leases?

OPT believes that sealed bids are the best way for developers and MMS to achieve their goals. Most bidding activities will be time bound due to a response to a utility RFP. This window will last from 60 – 90 days. If control of the site is not able to be established prior to the submittal of the bid, then the bid will most likely not be evaluated further. Developing a site at an approximate cost of \$6,500,000 per site in the hope that the Integrated Resource Plan or RFP may occur within 5 years requires the project developer to assume significant financial risk.

§285.224(c) What happens if MMS accepts my bid?

Ten (10) business days to review terms and conditions and execute a lease may be insufficient if the developer company's haven't seen the leases prior to receipt. Also, the requirements in §285.224(a) would also have to be met in this same timeframe. A longer period of sixty (60) calendar days would appear to be better for small companies.

§285.235 – If I have a commercial lease, how long will my lease be in effect?

In its matrix in this section, MMS indicates an operating term of 25 years "unless a longer term is negotiated by applicable parties". OPT suggests that MMS use a minimum of 40 years as the commercial operating period.

§285.406 – Designation of an Alternate Operator

OPT suggests that MMS utilize a different approach for approving a change in operators. OPT would like MMS to consider providing MMS with 30 days notice of change in operators. If MMS doesn't object to the change of operators, it will become effective. MMS has proposed this approach in other sections of the regulations and OPT believes this would be a better approach.

§285.427 – Renewals

Clearer guidelines need to be established for the renewal of a lease, particularly if there is potential for reuse of the site with similar equipment and minor changes to the mooring and cabling. This will enable project financing costs to be reduced and the development risk lowered for all stakeholders, including utility ratepayers.

§285.505 What operating fees will MMS collect from a commercial lease?

The power price (P) is defined as the retail electric rate. This determination puts all marine renewable at a disadvantage since they will be competing against terrestrial based projects which have their power costs and royalty rates calculated on the generating price. The power price in certain markets can be 70% or more of the generation price due to transmission and distribution costs.

§285.515 - §285.537 – Financial Assurances

MMS needs to develop more specific guidelines for Financial Assurances to allow developer companies to factor these costs into their project development and business planning cycles. OPT believes that approximate guidelines can be developed by MMS for these costs to allow better planning. OPT also suggests that MMS consider allowing use of the PPA, Sale Agreement, or similar instrument with suitable financial assurances by the buyer of the power to serve as Financial Assurances under the intent of this section. Since utilities will most likely be the purchasers of power generated by these projects under some form of contract, OPT believes that this mechanism would meet the financial assurance requirements of this section. In particular, it will allow a developer's working capital to be used in the prosecution of the project while the utility's financial standing may be utilized to meet the assurance requirements.

§285.601 When am I required to submit my plans to MMS?

Developers should be offered the alternative of conducting their own environmental studies and guidelines for the NEPA analysis in accordance with MMS requirements. This effort will reduce the burden on MMS staff and allow developers to pursue timely completion of the environmental studies required under this section.

§286.611 What information must I submit to MMS in complying with NEPA and other relevant laws.

Same comment as above. OPT and its subsidiaries are developing extensive environmental knowledge and expertise in compliance with various Federal and State laws of the areas we propose operating in.

§285.701 and §285.02 – Facility Design Documents & Fabrication & Installation Reports

The Facility Design Documents and Fabrication and Installation Reports cited in this section would be considered proprietary by most developers. It is unclear how this information will be protected and what is required under law to be made public.

§285.704 – 285.713 Certified Verification Agents

OPT is a leading marine renewable energy developer with installations of its PowerBuoy system all over the world. OPT's systems are designed to withstand 100 year storm surges in the waters in which they are deployed. OPT's general design guidelines have been evaluated by Lloyd's of London which acts as OPT's insurance carrier against loss and damages. OPT believes that the guidelines it has developed for deployment, installation, maintenance, and repair of its PowerBuoy system are world class. The

Company's designs and installation practices are fully compliant with generally accepted marine engineering guidelines and requirements, safety practices, and applicable Coast Guard regulations. The use of a CVA in addition to the design, engineering, and installation practices the Company currently employs for its projects duplicates engineering reviews and installation procedures the Company is currently employing in its wave parks.

§285.815(b) – Equipment Failure

The PowerBuoy and associated interconnection equipment are designed with protective relaying to safely shutdown and de-energize the equipment in case of equipment failure. In many cases of equipment failure, e.g., failure of a component may not be noticeable from an environmental standpoint. The PowerBouy is designed to protect itself. The three (3) day notification requirement should be restated to include equipment or failure which poses a significant risk to the environment, personnel, or property.

§285.909 – Facility Removal and Decommissioning

Clearing of a site within a year of lease termination to 15 below the mudline may be difficult given the limited weather windows of some areas in which renewable energy developers will be operating. Other factors including demands on vessels and skilled personnel by other renewable energy companies and offshore oil and gas project requirements may impact a company's ability to remove these structures within the stated timeframe. Additionally, significant disturbance to benthic marine communities may occur from removal of some structures which are environmentally benign and have become buried over the course of the life of the project.