COMMENTS OF SOUTHERN COMPANY

MINERALS MANAGEMENT SERVICE
PROPOSED RULE ON ALTERNATIVE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

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I. INTRODUCTION

These comments provide the Minerals Management Service ("MMS") with thoughts and recommendations regarding the proposed rule for alternative energy and alternate use activities ("AEAU") on the Outer Continental Shelf ("OCS") published in the *Federal Register* on July 9, 2008 ("Proposed Rule").[1]

Southern Company has submitted comments previously on the draft terms for the leasing of submerged lands for alternative energy activities on the Outer Continental Shelf ("OCS") published in the *Federal Register* on December 14, 2007 ("Lease Terms"),[2] on the MMS Interim Policy on offshore alternative energy resource assessment and technology testing activities under section 388 of the Energy Policy Act of 2005, published in the *Federal Register* on November 6, 2007 ("Interim Policy"),[3] and on the Advance Notice of Proposed Rulemaking on Alternative Energy Uses on the OCS, published in the *Federal Register* on December 30, 2005 ("ANPR").[4]

In addition, Southern Company submitted nominations for three sites under the Interim Policy on January 7, 2008.

A. About Southern Company

Southern Company (NYSE: SO) is a super-regional energy company based in Atlanta, Georgia with more than 42,000 megawatts ("MW") of electric generating capacity in the Southeast United States. Southern Company is one of the largest producers of electricity in the country, supplying energy to a 120,000-square-mile service territory spanning most of Georgia and Alabama, southeastern Mississippi, and the panhandle region of Florida. It has approximately 26,000 employees, providing reliable service to nearly 4.4 million customers. Southern Company and its subsidiaries have been serving the Southeast for more than 100 years.

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[1] 73 *Fed. Reg.* 39,376 (July 9, 2008).
[2] 72 *Fed. Reg.* 71,152 (Dec. 14, 2007).
[3] 72 *Fed. Reg.* 62,673 (Nov. 6, 2007).
[4] 70 *Fed. Reg.* 77.345 (Dec. 30, 2005).

Southern Company owns four regulated retail electric utilities: Georgia Power, Alabama Power, Gulf Power and Mississippi Power. In addition, Southern Company is a leader in environmental research, managing over $500 million over the past decade. Since 1990, we have invested more than $4.6 billion in environmental controls and we are projecting to invest an additional $3.9 billion through 2010 in additional pollution controls.

Southern Company appreciates the release of the Proposed Rule and MMS's intention to issue a final rule by the end of this year. We are actively considering whether and how to pursue research and development of wind technology off the coast of Georgia. Initial testing, completed in cooperation with the Georgia Institute of Technology, found that this energy technology may be substantially more costly to develop as a source of electricity than onshore coal or natural gas. It is not clear whether these activities will be commercially viable or will merit pursuing a lease for commercial development under this rule. However, Southern Company anticipates at a minimum that we will need to collect additional data and test technology on one or more sites off the coast of Georgia to determine viability and thus we may pursue a limited lease under either the Interim Policy or the AEAU program when the rule is finalized. Southern Company looks forward to working with MMS to pursue these activities.

B. Flexible and Streamlined Program Needed for an Infant Industry

In designing a regulatory program, the MMS needs to distinguish carefully the characteristics of alternative energy, the fledgling offshore alternative energy sector, and electricity markets from oil and gas, the oil and gas industry, and oil and gas markets.

Even for a company as large as Southern Company, the economic and regulatory uncertainties of this sector remain significant enough that we have not yet reached a conclusion regarding the viability of an offshore wind project. The cost and time needed to develop such a project are driven by the ease or difficulty of obtaining regulatory approvals as well as by technological challenges, and regulatory and economic uncertainty are the major factors in whether offshore projects will be built. In light of these two considerations, offshore alternative energy policy needs to encourage and incentivize the private sector to ensure this emerging market develops quickly to its full potential by providing a flexible regulatory structure which can adapt to changing situations. The policy and program should be as streamlined as possible to facilitate rapid development.

Unlike the oil and gas sector, this is an emerging industry with far lower potential returns. Oil and gas markets fluctuate relatively gradually. Electricity market rates can fluctuate widely by the hour. Electricity is subject to retail rate regulation in many parts of the country, and at the wholesale level, market-based rates are subject to federal review to ensure that they are just and reasonable. Retail regulation typically requires that low-cost power sources be used first to keep consumer rates low. Utilities have an obligation to provide their customers reliable power. Thus, offshore alternative energy, such as wind power, whose costs are higher than competing supply sources and whose output reliability is subject to nature, may have a market on only part of any given day. This emphasizes the point that the economics of these projects are subject to substantial uncertainty. Also unlike oil and gas companies, most players in this industry do not

have large amounts of capital to utilize and to enable self-financing. They must make their case to investors, whose interest in the effect of any regulatory structure is obvious.
It is also worth mentioning that oil and natural gas have intrinsic value, and there is domestic demand for them that far exceeds supply. They can also be stored for later use, are readily transported, and they have a variety of different end-uses and therefore a diverse market. These resources, as commodities, can be "possessed." Alternative energy resources, on the contrary, have no intrinsic market value. Unless their energy potential is instantaneously converted to electricity, they do not have energy value. Much of alternative energy cannot be stored for later use and cannot be possessed. As an intermittent resource, wind energy and other alternative energy sources can only complement and not replace electricity sources that are reliably available on demand. Due to its interruptible nature, wind energy also cannot compete easily against larger baseload generation facilities which must meet a constant load demand.

The oil and gas industry can withstand a more detailed and prescriptive regulatory framework than the offshore alternative energy industry. MMS must keep these absolutely fundamental distinctions firmly in mind, or risk hobbling the offshore renewable industry before it even takes shape.

This is a new area that will require significant risk-taking on the part of early movers, with less certainty of an adequate financial return. MMS should design its final rule with a view to mitigating as many of these risks as possible.

C. Rule Should Reflect the National Interest to Develop These Resources

MMS should recognize that the development of this sector is in the national interest, particularly at a time when the country is confronting an energy crisis. Indeed, the importance that Congress placed on the expeditious development of offshore renewable resources is evident in that the legislation pursuant to which this rule is being developed provided that final rules governing offshore alternative energy development be promulgated by May 2006.

In a related context, MMS's sister agency under the Department of the Interior, the Bureau of Land Management ("BLM"), has adopted a policy to encourage the development of onshore wind energy by setting short application processing time frames; approving right-of-way applications on a first-come-first-served basis without automatically opening sites up to minimum bids unless more than one application is submitted; designating data as proprietary; not limiting the duration of a right-of-way grant; specifying that National Environmental Policy Act ("NEPA") documentation be undertaken progressively, at each unique phase of the process; suggesting that data collection activities normally will involve a categorical exclusion under NEPA; and suggesting that the development phase normally will be covered by an Environmental Assessment.[5] BLM specifically acknowledged the need to encourage this industry in its policy: "The Wind Energy Development Program is likely to result in the greatest

[5] U.S. Department of Interior, Bureau of Land Management, Instruction Memorandum No. 2003-020, Interim Wind Energy Development Policy, Oct. 16, 2002.

amount of wind energy development over the next 20 years, at the lowest potential cost to industry."[6]

In light of both congressional intent and intra-department precedent, MMS's final rule should reflect the selection of policy options to encourage development of alternative energy uses on the OCS. In that regard, the Proposed Rule seems most intently focused on providing a financial return to the government rather than on ensuring the development of these resources occurs at the earliest practicable time. While a fair return is one of the objectives sought by Congress, the rule ultimately must be fashioned in a way to facilitate these alternative forms of energy, keeping in mind the natural obstacles facing the sector as well as the fact that developing these sources of energy is in the public interest. We are confident the MMS will be able to set leasing fees at an appropriate level; it is unnecessary delays in the regulatory and approval process that may have the greatest effect on whether the market fully and expeditiously develops.

The remainder of our comments are geared toward suggesting to MMS ways to remove unnecessary impediments to development and to provide streamlined flexibility within the regulatory structure.

II. GENERAL PROVISIONS

A. Integration of Interim Leasing Policy

Southern Company supported the issuance of the MMS Interim Policy and draft Lease Terms in November and December 2007 and has submitted an expression of interest under that program. However, the Proposed Rule does not attempt to explain how, if at all, this Interim Policy is supposed to be integrated into the overall structure of the rule. In fact, we have been unable to find a single mention of the interim lease program in the Proposed Rule or its preamble. As a result, it is unclear whether the two programs are intended to be distinct or integrated.

This lack of explanation is particularly confusing given that the lease provided for under the Interim Policy would appear to be essentially the same as a limited lease under the Proposed Rule. In that regard, we believe the lease in both cases should extend to technology testing in appropriate situations and we urge MMS to make this clear in its final rule.

In order to increase the flexibility of the program and the options for applicants, Southern Company suggests the following. If an applicant is undertaking the steps necessary to secure a lease under the Interim Policy but has not executed a lease by the time the final rule is promulgated, we would ask MMS to allow an applicant to switch to any of the options available under the final rule.

In summary, with regard to the Interim Policy, Southern Company encourages MMS to adopt an explicit statement that contains the following:

[6] U.S. Department of Interior, Bureau of Land Management, Record of Decision: Implementation of a Wind Energy Development Program and Associated Land Use Plan Amendments, December 2005, at 5.

1) Clarification that interim leases are the same as limited leases provided under the Proposed Rule;

2) A lease for offshore wind under the Interim Policy should explicitly include technology testing activities if requested by the applicant, just as for a limited lease; and

3) An applicant with an accepted nomination under the Interim Policy lease program should be able to switch to any of the options provided in the final rule, including a commercial lease, if the applicant has not signed an interim lease.

B. Clarification That MMS is Not Claiming Authority Over Electricity Sales

The Proposed Rule states that, "A [c]ommercial lease would convey the access and operational rights necessary to produce, sell, and deliver power on a commercial scale, through spot market transactions or a long-term power purchase agreement."[7] Southern Company assumes that this is simply a description of the purpose of a commercial lease and that MMS is not asserting authority over the sale of electricity, an activity traditionally under the purview of the Federal Energy Regulatory Commission or the relevant state(s). MMS should clarify in the final rule that it is not claiming any right to regulate electricity generation, sales, or transmission.

The Federal Energy Regulatory Commission and the states occupy the field with respect to the regulation of electric sales and electric transmission. Under Section 201(a) of the Federal Power Act, "[T]he business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and . . . Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States."[8] Equally important, states regulate the retail sale of electric energy and intrastate electric transmission, and also issue permits for the construction of transmission and generation facilities. MMS should expressly recognize these federal and state authorities and disclaim any authority to regulate the generation, sale, or transmission of electricity.

C. Environmental Impact Statement Requirements Are Unnecessarily Burdensome

MMS has adopted environmental documentation requirements that are significantly more stringent than required by law or than make sense given the physical impacts expected from activities conducted under various MMS leases, particularly data collection and technology testing. In addition to the OCS Alternative Energy Final Programmatic Environmental Impact Statement ("EIS"), which MMS already has completed,[9] four distinct National Environmental Policy Act ("NEPA") steps are required under the Proposed Rule. Three EISs may be required to

[7] 73 *Fed. Reg.* 39,383 (July 9, 2008).
[8] 16 U.S.C. § 824.
[9] Minerals Management Service, OCS Alternative Energy Programmatic Environmental Impact Statement, *available at* http://ocsenergy.anl.gov/eis/guide/index.cfm.

be completed for a competitive commercial lease; two EISs may be required for a non-competitive lease; and three EISs may be required if an applicant first pursues a non-competitive limited lease, followed by a non-competitive commercial lease.[10] This is an extraordinary level of environmental documentation not seen in other sectors. It certainly is not appropriate for the low levels of environmental impact and positive environmental benefits generated by the offshore renewable energy sector. Requiring more environmental impact statements than is necessary likely will add years to a project timeline, potentially making projects commercially unviable and unattractive to finance.

MMS seems to have superimposed the oil and gas model here, which seems particularly inappropriate in the context of offshore alternative energy. The potential environmental consequences of oil and gas development are different than wind or wave energy. Oil and gas facilities may potentially experience spills, leaks and other incidents having an environmental impact. The potential environmental damage from offshore alternative energy development is minimal by contrast.

In general, Southern Company believes that the process MMS has proposed for pursuing limited and commercial leases under the offshore alternative energy program goes far beyond what NEPA and other agencies' implementation of NEPA require in order to demonstrate the extent of environmental impact. While Southern Company commends MMS for moving forward and publishing a proposed rule to govern offshore alternative energy sources, we are concerned that the administrative burdens in the rule will significantly hinder the development of this beneficial and high priority energy sector.

Consistent with existing Department of Interior policy, we believe that data gathering activities under both the limited and commercial leases should be covered by a categorical exclusion. Categorical exclusions are defined in the Council on Environmental Quality ("CEQ") NEPA implementing regulations as:

> a category of actions which do not individually or cumulatively have a *significant* effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. . . .[11]

The CEQ regulations specifically call for agencies to reduce the paperwork involved in the NEPA process by:

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[10] MMS says in the preamble to the Proposed Rule that it expects to require an EIS for both the SAP and the COP in all commercial leases, and an EIS for the GAP of a limited lease. 73 *Fed. Reg.* 39,419 (July 9, 2008). MMS clarifies that a competitive commercial lease would probably warrant "three NEPA and three CZMA reviews—one each for the Lease Sale action, the SAP, and the COP." *Id.* at 39,420. For a commercial lease issued non-competitively, the preamble states that "two NEPA and two CZMA reviews would be required—one for the lease with the SAP and one for the COP." *Id.* For limited leases, "two NEPA and two CZMA reviews would be required for a competitive limited lease and one review for a non-competitive lease. The reviews for the competitive limited lease would be conducted on the lease sale action and the GAP, while the non-competitive limited lease would have a simultaneous review of the lease issuance action and the GAP." *Id.*

[11] 40 C.F.R. § 1508.4.

> (p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement.[12]

Extensive precedent exists for granting data collection activities categorical exclusions. The Department of the Interior has in fact included among its categorical exclusions "nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities."[13] BLM has adopted a similar policy.[14] In a number of areas, including BLM onshore wind energy projects, categorical exclusions are regularly provided for the data gathering stages of a project, affirming that data gathering activities do not, on an individual or cumulative basis, "significantly affect the quality of the human environment." The data collection and research involved in determining the feasibility of a wind project site under a limited or commercial lease should similarly qualify for a categorical exclusion.

Furthermore, MMS's own NEPA Guidelines include a categorical exclusion for "inventory, data, and information collection, including the conduct of environmental monitoring and nondestructive research programs."[15] Data gathering for wind projects may also qualify for several additional existing MMS categorical exclusions, including:

- "All resource evaluation activities including surveying, mapping, and geophysical surveying which do not use solid or liquid explosives"[16]

- "Establishment and installation of any research/monitoring devices"[17]

- "Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan."[18]

We urge MMS to explicitly indicate that one or more of these categorical exclusions applies to data gathering for alternative energy projects. If the MMS has concerns about the effect in a specific instance of a categorically-excluded activity—for example, related to an aquatic species

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[12] *Id*.
[13] Appendix 1 (item 1.6), Department Categorical Exclusions, U.S. Department of the Interior, *Departmental Manual*, Environmental Quality Programs Series, 516 DM 2.3(A)(2), June 21, 2005.
[14] Bureau of Land Management, "Wind Energy Development Policy," Instruction Memorandum No. 2006-216, Aug. 24, 2006, *available at* http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2006/2006-216__.html ("The use of a Categorical Exclusion (CX) for the issuance of short-term right-of-way authorizations may be applicable to some site testing and monitoring locations.").
[15] Categorical Exclusions, Minerals Management Service, U.S. Department of the Interior, *Departmental Manual*, Environmental Quality Programs Series, 516 DM 15.4(A)(1), May 27, 2004.
[16] *Id*. at 516 DM 15.4(B)(1).
[17] *Id*. at 516 DM 15.4(B)(5).
[18] *Id*. at 516 DM 15.4(C)(13).

in the area—it should address the matter not by overriding the exclusion, but by establishing appropriate lease conditions to prevent potential impacts.

Well-designed offshore alternative energy projects are likely to have negligible impacts on the environment overall. Avian concerns have been significantly mitigated in the last five years by better turbine siting and design. With its ability to diversify the nation's energy sources with generally insignificant environmental impacts, wind power, particularly offshore, is strongly supported by Congress, the Administration, and public policy.

Consequently, Southern Company encourages MMS to reduce the environmental documentation requirements under NEPA and to streamline what will be required under the final rule. MMS should clarify that a NEPA categorical exclusion applies for the Site Assessment Plan ("SAP") phase of a commercial lease or for a General Activities Plan ("GAP") under the limited lease.

We recognize that, in evaluating the applicability of a categorical exclusion for data collection or technology testing devices, MMS may need to evaluate whether there are "extraordinary circumstances" which may warrant a greater level of environmental review.[19] For example, if the original plan for a meteorological tower had selected a location near a historical shipwreck area or had contemplated construction during the migration season of an endangered or threatened species, MMS may want to evaluate whether to invoke the "extraordinary circumstances" exception.[20] But in making its final decision on this matter, MMS should consider any mitigative measures proposed by an applicant, such as moving the tower to avoid the potential shipwreck location or placing seasonal restrictions on construction activity so as to avoid interference with endangered or threatened migrating species. In any event, even if MMS chooses to invoke the "extraordinary circumstances" exception, MMS should, at most, undertake an environmental assessment ("EA") for data collection and technology testing activities and should, in most circumstances, conclude that such activities will not have a "significant effect on the human environment" and will thus not trigger an environmental impact statement. In that regard, it is well-established in the case law that a "finding of no significant impact" ("FONSI") can be based on mitigation measures proposed by the applicant.[21] Thus, if an applicant proposed to move its meteorological tower to avoid a potential historical resource or restrict its construction activities to avoid the migration of a threatened or endangered species, the action, as mitigated, could form a solid basis for an FONSI.[22]

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[19] 40 C.F.R. § 1508.4; U.S. Department of the Interior, *Departmental Manual*, Environmental Quality Programs Series, 516 DM 2.3(A)(3) and Appendix 2, June 21, 2005.

[20] See, e.g., items 2.7 and 2.8 of Appendix 2, U.S. Department of the Interior, *Departmental Manual*, Environmental Quality Programs Series, 516 DM 2, June 21, 2005.

[21] *C.A.R.E. Now, Inc. v. Federal Aviation Administration*, 844 F.2d 1569, 1575 (11th Cir. 1988); *Preserve Endangered Areas of Cobb's History v. United States Army Corps of Engineers*, 87 F.3d 1242, 1248 (11th Cir. 1996); *Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 682-83 (D.C. Cir. 1982); *Roanoke River Basin Association v. Hudson*, 940 F.2d 58, 62 (4th Cir. 1991); *Park County Resource Council v. United States Department of Agriculture*, 817 F.2d 609, 621-23 (10th Cir. 1987); *Jones v. Gordon*, 792 F.2d 821, 829 (9th Cir. 1986).

[22] In some circumstances, project-specific EISs tiered off of the programmatic EIS may be appropriate prior to issuance of a competitive lease and for the Construction and Operations Plan ("COP") of both competitive and non-competitive commercial leases, but such a level of effort is simply not warranted by the expected physical impacts associated with data collection or technology testing activities.

Environmental documentation should be geared to the particular stage of the project at issue. For example, if an applicant is seeking approval under a SAP to monitor wind speeds and collect data or conduct research, the applicant should not be required to submit environmental documentation on impacts of the potential commercial project. Instead, more detailed documentation should await the development phase of the lease when the project feasibility study and the site monitoring data are available and can provide a robust basis for the NEPA environmental evaluation and when the size and location of the proposed commercial development have been determined and can be meaningfully evaluated. Data collection and research does not mean that commercial development will result.

Precedent exists for this structure. BLM separates environmental review for different phases of wind energy projects, noting that few data gathering activities result in commercial development projects. Thus, if a categorical exclusion does not apply and MMS must assess in an Environmental Assessment the impacts of data collection or technology testing proposed in a SAP, MMS should limit the scope of its environmental review to the impacts of such activities and should not engage in unnecessary and unwarranted speculation about the scope and impacts about a potential development project which may or may not emerge after the data collection or technology testing phase.[23]

D. Protecting Confidential Information

Southern Company strongly encourages MMS to protect the confidentiality of information submitted under this program to the fullest extent possible under law. Section 285.113 of the Proposed Rule addresses confidentiality and it is one of the shortest sections of the Proposed Rule. Southern Company urges MMS to be detailed in this section and to articulate clearly an affirmative policy to maintain proprietary and confidential information to the maximum extent permissible by law. This is essential in order to generate the confidence of the private sector. Currently, the rule does not provide applicants with any assurances that the agency will do its utmost to protect this information.

In contrast with the oil and gas industry, potentially low returns accrue in the offshore alternative energy sector. Industry requires not only substantial financial incentives to take risks in this new field, but also requires favorable non-financial policies like a strong confidentiality policy. If companies believe proprietary data and modeling may be accidentally or purposefully released in the course of agency business, they will be far less willing to undertake the substantial research and testing activities needed prior to entering into commercial development.

The agency's actions to date have eroded confidence that MMS will protect information in accordance with the needs and concerns of applicants. For example, in the nomination process under the Interim Policy, Southern Company clearly identified certain information as confidential and proprietary (including Southern Company's identity), yet MMS disclosed some of this information in its solicitation of competitive interest without forewarning. A strong and affirmative expression of the intent to protect confidential information would be a significant step toward regaining any initial loss of industry confidence.

[23] This concept is discussed further in Section V(B) below.

Since the applicants are the only entities assessing or developing alternative energy on the OCS, we urge MMS to give greater weight to their concerns. If businesses do not have confidence that the agency will keep proprietary information confidential, they will not develop alternative energy facilities on the OCS. Under the Freedom of Information Act ("FOIA"), MMS has discretion about whether to assert an exemption. We would urge MMS to state in the final rule that the agency will honor claims of confidential and proprietary business and financial information.

Southern Company also requests MMS to clarify how long the data submitted under interim or limited leases will be kept confidential. Allowing "free riders" to obtain such data under FOIA before the development leasing process has been completed would defeat incentives for applicants to collect data and prepare sites for commercial development. To avoid such disincentives, MMS should agree to keep all information confidential for the length of time needed to commence the development phase of a lease.

In sum, Southern Company encourages MMS to amend Section 285.113 to:

1) State that MMS intends to affirmatively protect the confidentiality of proprietary information to the maximum extent permitted by law; and

2) Maintain the confidentiality of all data, information and modeling reported under interim or limited leases until the award of commercial leases for the parcels under consideration.

III. SUBPARTS B AND D - PROCESS OF ISSUING LEASES AND LEASE ADMINISTRATION

In these subparts, it is particularly important to recognize that a key purpose of offshore alternative energy policy is to support and incentivize the development of renewable energy in offshore areas. Offshore alternative energy faces many hurdles as it gets started and the rules should not impose additional unreasonable hurdles, but should seek to make the process as smooth as possible. Other countries have done a good job of encouraging this type of energy and as a result have many hundreds of megawatts of installed capacity. The U.S. should not be at a competitive disadvantage with the rest of the world in attracting this type of technology and investment. Where processes and rules are justified (e.g., in the case of environmental, health and safety protections, among others), business will not be deterred. However, MMS must be careful about not adopting unnecessary or duplicative rules or imposing other hurdles that will result in a much more stunted offshore renewable energy industry than is found elsewhere in the world.

A. MMS Should Adhere to Schedules and Deadlines to Expedite the Sector's Development and Minimize Uncertainty

MMS was prompt and responsive during the nomination process for interim leases. However, Southern Company encourages the agency to adopt fixed timeframes, like a 60-day turnaround,

in which it must issue decisions or make progress on submissions of information. Without such timelines, applicants and their financiers will have no expectation of when projects may be approved or disapproved, creating significant uncertainties. The Proposed Rule contains several fairly tight deadlines for applicants to complete requirements, but contains almost no time requirements which MMS itself must adhere to.[24] MMS must consider this recommendation in the context that applicants are responding to a proposed rule issued more than two years after a statutorily mandated deadline for a final rule. In order to assure expeditious data collection and development, MMS should establish a 60-day timeframe within which to respond to unsolicited proposals and to commence the process of determining whether there is competitive interest. Moreover, once an applicant has been identified, adopting deadlines for responding to applications, completing documentation, and working with other agencies and the states to achieve necessary approvals and certifications, is an important step to ensure that offshore renewable energy development is not delayed.

B. Bidders Should Have Flexibility to Designate Package of Tracts but Should Not Be Burdened with Intertract Competition

The Proposed Rule solicits input on several aspects of the bidding process, including the applicant's ability to package several tracts, the possibility for intertract competition, and the scope of competition for overlapping tracts.

Packaging tracts. MMS should provide the flexibility for applicants to bundle together several tracts which, in the applicant's view, have the best potential for commercial development. It is likely that the initial stages of the offshore alternative energy program will be a primarily applicant-driven, rather than MMS-driven, process. Applicants have been actively investigating available and developing technology and the existing environmental data for various sites, and are in the best position to determine whether one, two, or more tracts are necessary to support commercial development. Thus, MMS should allow applicants the flexibility to nominate several tracts together in the interest of fashioning a commercially viable development proposal.

Intertract competition. Southern Company discourages MMS from commencing intertract competition where competition does not exist. MMS discusses the possibility for employing this technique in the preamble to the Proposed Rule.[25] If there is no interest in a particular tract, MMS should not be attempting to inflate or manufacture artificial interest where none exists. In such a situation, MMS should conclude that no competition exists and proceed to issue a non-competitive lease for that tract. The statutory language of Section 388 of the Energy Policy Act provides no support for such action.

Overlapping tracts. Southern Company encourages MMS to limit the competitive process to only those portions of the tract where there is an overlap in the expression of interests. This is important to ensure the most expeditious development of these offshore resources. Under the

[24] One exception to this is that MMS has stated it hopes to respond to sealed competitive bids within 90 calendar days after the sale date. 73 *Fed. Reg.* 39,399 (July 9, 2008). Three months appears to be an unusually long period of time to determine a winner in an auction. In the private sector, this usually takes place instantaneously or at most within a single day. It is not clear why MMS would need three months to determine which bid was the highest.
[25] 73 *Fed. Reg.* 39,399 (July 9, 2008).

Proposed Rule, the competitive process is more time-consuming and burdensome than the non-competitive process, both due to the nature of the competition and to the upfront preparation of NEPA documentation. Where two applicants are prepared to proceed to non-competitive leases on tracts or portions of tracts where there is no overlap, MMS should encourage them to do so. For example, if applicant A seeks to develop a 5,000-acre tract, applicant B seeks to develop an adjoining 3,000-acre tract, and there is 500 acres of overlap, MMS should be prepared to proceed immediately to offer non-competitive leases of 4,500 acres to applicant A and 2,500 acres to applicant B, followed later by a competitive lease for 500 acres, if that is necessary. In this way, MMS will encourage prompt development on all parcels in which there is a demonstrated interest. Unnecessarily manufacturing an adversarial posture between projects that can co-exist may reduce U.S. leasing revenues by imposing burdens that discourage applicants from proceeding.

C. Remove Minimum Bid and Reservation Price System

MMS has proposed to adopt a minimum bid and reservation price system for non-competitive leases.[26] Since the OCS Lands Act[27] does not specify any particular auction methodology for offshore alternative energy leases, and for reasons explained below, we strongly encourage MMS to eliminate these provisions.

With respect to both a minimum bid and a reservation price, the "fair return"[28] concept seems inappropriate in the offshore alternative energy context. As discussed above, nothing is being "taken" or "possessed" from these areas when alternative energy is involved. The lease simply conveys the right to the lessee to occupy the tract for a particular period of time to utilize an infinite resource like wind, waves or current to generate electricity. Aside from the very modest opportunity cost that might be involved in this occupation of an area of offshore territory, the government should not need to be compensated for such a lease as it is not foregoing anything that would require a "return." Under separate areas of the rule, the lessee is responsible for ensuring that any environmental damage is mitigated and remedied. In addition, the base rental rate and operating fees will cover costs to MMS of operating and overseeing the program and will deter insincere applicants not acting in good faith. Requiring a minimum bid or reservation price seems to be an added cost that is not justified given the circumstances. MMS should be encouraging the most rapid responsible development of the OCS for alternative energy purposes, as Congress desired, and these provisions work against that goal.

In addition, the energy to be produced is not homogenous across projects, given variances in capacity factors and other production characteristics. That fact, as well as the vast differences in the local or regional markets into which the energy will be sold, means there is not an adequate basis for determining a minimum bid or reservation price. What if the minimum bid or reservation price is not achieved? Would MMS propose to simply walk away from any bids below those indicators and prevent development of an important resource even if there is interest? As MMS recognizes, most leases will probably be non-competitive in the near term so it will likely be some time until there are reliable price signals about the value of these tracts. In

[26] 73 *Fed. Reg.* 39,398-99 (July 9, 2008).
[27] 43 U.S.C. § 1331 *et seq.*
[28] 73 *Fed. Reg.* 39,398 (July 9, 2008).

the alternative, Southern Company encourages MMS to adopt a policy that it will negotiate with all interested applicants to ensure that areas of interest get developed, even if bids fall below an artificial price signal which may not reflect actual market value.

D. Lease Terms Should be Negotiated

Several times throughout the preamble and the Proposed Rule, MMS suggests it will solicit comment from the states and public about the content of proposed leases and will publish lease terms prior to the point at which a lessee will sign the lease with MMS.[29] MMS's solicitation of state and public comment on the proposed lease form may make sense as long as this form is the basis for MMS's *opening* position on lease terms. Once the opening position has been established, MMS should enter into tailored negotiations with each applicant to ensure the lease instrument effectuates the business purposes of the applicant. Ultimately, it is the applicant that will take the risk and secure the financing to develop this new and untested resource. MMS should be flexible in its approach and must be willing to negotiate suitable lease terms which meet the objectives of the lessor and the lessee.

The only experience potential developers have had with MMS offshore alternative energy leases to date has been to comment on proposed lease terms under the Interim Policy earlier this year. When the next version of the lease was published in April 2008, it was apparent that very few changes that had been suggested by commenters were adopted.[30] Southern Company hopes and expects that when MMS considers leases with applicants that MMS will be more open to negotiation and tailored amendments. While it is still not clear whether MMS will allow any additional changes, we are interpreting what MMS has done to date as the agency being open to further lease-by-lease and site-by-site negotiations with lessees.

E. Commercial Lease Renewal

Section 285.425 *et seq.* provides that lessees may apply for renewals or extensions of their leases. If a commercial lease has produced power and has a good compliance record, there should be an expectation that a lease will be renewed. In most of Europe, lease rights for offshore projects are given in perpetuity. It would be an enormous economic waste, clearly contrary to the public interest, if a lessee desired to continue operating a renewable energy facility but MMS denied the lease renewal simply for the purpose of opening the site up to competition. This would also create environmental disruption, since under the MMS's proposal, the current lessee would need to decommission its facilities prior to the new lessee's commencement of construction. In order to effectuate commercially reasonable expectations and to prevent economic waste and environmental disruption, Southern Company supports the adoption of automatic lease renewals upon a lessee's request, provided the lessee has produced commercial power and a good compliance record on environmental, health, and safety issues during the initial lease term.

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[29] See, e.g., 73 *Fed. Reg.* 39,400 (July 9, 2008) ("Our acceptance notice [of the successful bid] will include three copies of the lease to be executed by the bidder") and Section 285.224, 73 *Fed. Reg.* 39,469 (July 9, 2008) ("If we accept your bid, we will send you a notice with three copies of the lease form. Within 10 business days after you receive the lease copies, you must execute the lease . . .").

[30] 73 *Fed. Reg.* 21,363, et seq. (April 21, 2008).

IV. SUBPART E - FEES AND PAYMENTS

A. Operating Fees Should Commence After the Project Achieves a Return

Southern Company suggests that due to financial and operating constraints, a more practical approach would be to start imposing operating fees after the project has been in commercial operation for one year and some level of output from the facility has been subscribed. Until revenues are earned by commercial operation, the project will not have a revenue stream from which to pay the fee and will instead be forced to finance the operating fee. The carrying costs of the project at the early stage will be significant and are a sufficient incentive to ensure the developer will pursue successful commercial operation in a timely and diligent manner. Moreover, the calculation and payment of an operating fee after one full year of commercial operation will avoid the need to establish hypothetical capacity factors, which are not directly related to a particular project's operations. This is particularly important for an area like offshore Georgia, which does not have a sustained wind resource comparable to other domestic and foreign development projects. Rather than impose an initial capacity factor which has a significant potential of being too high, MMS should base its operating fee on real data compiled during the first year of commercial operation. To this end, we would propose that Section 285.505 be amended to state that the first payment will be based on the first full year of commercial operation.

B. Formula for Operating Fees Should be Reconsidered

MMS's approach to the fees in the Proposed Rule under Section 285.505 seems to be geared primarily to maximize the government's return rather than incentivizing development of an energy resource that is in the national interest. Fees that are too high will accomplish neither. Offshore alternative energy does not provide to private sector developers the type of margins that the offshore oil and gas industries may realize, and imposing high operating fees threatens to make these high-risk projects financially infeasible.

Southern Company encourages MMS to take a modified approach to imposing and calculating operating fees—one that reduces costs and hurdles for applicants and encourages rapid development and deployment of offshore alternative energy resources. There are a few modest adjustments that MMS could make to the operating fee formula to make it more palatable for developers.

First, the formula for calculating the operating fee should be based on wholesale rates. Basing the operating fee on retail rates does not make much sense since the lessee will not be receiving the retail rate for the power it produces, and since retail rates will reflect only in small part the cost of purchasing the offshore alternative energy output.

In addition, the capacity factor should be based on meteorological data at the existing site, not on MMS evaluation of "comparable" sites. Sites can differ tremendously based on location and, as long as site-specific data is available for a site, there seems to be no good reason why precise capacity factors should not be used. Furthermore, the capacity factor should be discounted by a

percentage from the measured data to account for annual fluctuations. Again, the public policy purpose is to encourage development of the offshore alternative energy resource.

Finally, Southern Company strongly encourages MMS to clarify that the operating fee set during the term of a lease will not be adjusted unless it is based on a formula negotiated with the lessee and incorporated into the executed lease. Entities need to be able to model the costs of a long-term project. It is not realistic or fair to raise operating fees based on some post hoc exercise of MMS's discretion. To avoid such financial uncertainty and the concomitant risk to project viability, MMS should disavow the potential approach suggested at 73 *Fed. Reg.* 39,413 and should affirm that an operating fee can only be adjusted based on a formula mutually agreed upon by the parties and included within the lease.

C. Financial Assurance Provisions are Overly Burdensome

MMS's requirement that an applicant obtain a surety bond or the other forms of assurance specified in Section 285.526(a) to ensure timely decommissioning of facilities will require applicants to incur significant and generally unnecessary costs, particularly for companies which are able to provide financial assurances in other, far less expensive ways.

It is wasteful to have a creditworthy company tie up financial resources for thirty years. Monopolizing significant amounts of capital for an obligation that will not accrue for decades on the risk that the lessee will go bankrupt seems to be excessive. Surety bonds and the alternate forms of financial assurance are expensive (usually around 1 percent of face value) and could significantly impact the commercial viability of a project. At a minimum, MMS needs to allow for a broader array of credit support and performance assurance beyond the costly options specified in the Proposed Rule.

We suggest that MMS consider as an alternative adopting the tests for financial assurances used elsewhere in the OCS program, including in the MMS Notice to Lessees, 2003-N06.[31] This policy removes the requirement for maintaining a supplemental bond where the applicant can demonstrate financial strength and reliability through providing audited financial statements.

Other agencies allow for a financial means test or parent company guarantee. The agency can require this to be issued annually so there is an opportunity to regularly review the parent's status. This approach is consistent with the policies of the U.S. Environmental Protection Agency ("EPA") for the Resource Conservation and Recovery Act ("RCRA") and Superfund programs. EPA's RCRA regulations provide for a financial test to assure payment of the costs of closure and post-closure activities for hazardous waste treatment facilities.[32] Similarly, the model consent decree under Superfund allows settling parties to use a financial test to satisfy their obligation to assure completion of remedial work.[33]

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[31] Minerals Management Service, *Notice to Lessees and Operators - Federal Oil, Gas and Sulfur Leases in the Outer Continental Shelf: Supplemental Bond Procedures*, NTL No. 2003-N06, June 17, 2003.
[32] See 40 C.F.R. § 264.143(f), 145(f) (2005).
[33] 30 C.F.R. § 250.1750 (2007).

Further, we note that the risks to the environment and taxpayers of an abandoned alternative energy project, such as a wind tower, should such a circumstance arise, are far less than the risks from an improperly decommissioned extraction project, waste site, or facility with hazardous materials. The level of assurance provided should be commensurate to the risk involved.

For an investment grade lessee, obtaining third party assurances is a needless expense that provides no additional security. We would encourage MMS to allow a creditworthy lessee to satisfy any financial assurance requirement by providing its audited financial statements, evidence of investment grade credit ratings, or other satisfactory evidence of its financial strength. Alternatively, MMS should permit lessees to supply a parent company guarantee.

V. SUBPART F - PLANS AND INFORMATION REQUIREMENTS

A. Integration of Documentation Requirements

Subparts F and H need to be better integrated and coordinated to more clearly indicate to the applicant what documentation is required to be completed while submitting GAP, SAP and COP plans for approval and how the documentation fits into the overall process. For example, the environmental requirements and documentation listed under Subpart H (particularly Sections 285.800-804 and 807) have significant overlap with the GAP and SAP requirements.

Section 285.606(a)(4) requires the applicant to include in the SAP a demonstration that the activities "[do] not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment; or to sites, structures, or objects of historical or archaeological significance." In addition, if the SAP involves the construction of meteorological towers, the applicant must submit a description of "proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts."[34] It is not clear how these descriptions fit with or perhaps duplicate the studies that must be performed under Subpart H. Subpart F mentions NEPA and CZMA requirements, but not the several other environmental laws that must be adhered to. These two subparts could be integrated and better explained.

MMS should draft the final rule so that Section 285.611 regarding the SAP, Section 285.627 regarding the COP, and Section 285.646 regarding the GAP mention the environmental documentation discussed in Subpart H that will be required to be initiated and coordinated with MMS. At a minimum, Southern Company would suggest that if MMS does not wish to move these sections to Subpart F, the agency should cross-reference those sections. It would be beneficial for applicants to know what additional information needs to be supplied in the SAP and at what stage. Presumably the information required to be submitted in the 800 sections regarding the Endangered Species Act ("ESA"), the Marine Mammals Protection Act ("MMPA"), archaeological laws, the Magnuson-Stevens Act ("MSA") and the Clean Air Act ("CAA") all need to actually accompany the SAP or GAP when it is submitted for review. As the rule is currently structured, it is not clear whether this is indeed the case, so additional clarification and integration would be of assistance to the applicant.

[34] 73 *Fed. Reg.* 39,484 (July 9, 2008).

B. Environmental Documentation for GAP/SAP is Overly Burdensome

In some instances during the initial stages of the program, an EIS may be appropriate for a COP on a commercial lease that involves many turbines. In these situations there may be visual impacts, potential avian impacts, long construction seasons and associated noise, and greater area of impact on the bottom of the ocean. On the other hand, as discussed earlier, Southern Company strongly encourages the MMS to affirm that the activities normally conducted under a GAP or SAP should not require an EIS or EA and instead should qualify for a categorical exclusion under NEPA. The physical impact of these initial activities is the same or less than the impact of activities for which MMS has already granted categorical exclusions.[35] Specifically, meteorological towers are much less disturbing and damaging to the environment than oil and gas exploration, which has been granted a categorical exclusion. Some offshore alternative energy data collection facilities have almost no physical impacts. NEPA documentation should not be required at all for such facilities and they should fall under a categorical exclusion. At most, an Environmental Assessment with a Finding of No Significant Impact should be the NEPA documentation required for meteorological towers and technology testing. Assuming an EIS will be required is wholly disproportionate to NEPA implementation in every other context with which we are familiar, and is both unfounded and unnecessarily burdensome.

In a directly analogous situation, another agency, the United States Army Corps of Engineers ("Corps"), has established Nationwide Permit 5 for scientific measuring devices.[36] In order to issue a Nationwide Permit, the Corps needs to make a determination that there are minimal environmental effects on an individual and cumulative basis.[37] Nationwide Permit 5 notes that, "Activities that result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, cannot be authorized by NWPs."[38] This Nationwide Permit considers compliance with the Clean Water Act, the CZMA, the Marine Protection, Research and Sanctuaries Act, NEPA, the Fish and Wildlife Act, the Migratory Marine Game-Fish Act, the ESA, the Deepwater Port Act, the MMPA, the Wild and Scenic Rivers Act, the Ocean Thermal Energy Act, the National Fishing Enhancement Act and the MSA. For this Nationwide Permit, the Corps determined that the installation and operation of scientific measuring devices in navigable waters of the U.S., including marine areas, would not adversely affect the environment and would comply with the above-listed laws.

MMS's expectation that an EIS will be required for such devices is unfounded based on the likely impacts of activities in a GAP or SAP. These activities simply do not result in significant impacts to the environment, so there is no basis to expect or require an EIS.[39] Continuing down

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[35] Categorical Exclusions, Minerals Management Service, U.S. Department of the Interior, *Departmental Manual*, Environmental Quality Programs Series, 516 DM 15.4(C)(9),(10), and (12), May 27, 2004.
[36] U.S. Army Corps of Engineers, Decision Document - Nationwide Permit No. 5, *available at* http://www.usace.army.mil/cw/cecwo/reg/nwp/NWP_05_2007.pdf.
[37] 33 C.F.R. § 330.1(b) ("Nationwide permits (NWPs) are a type of general permit issued by the Chief of Engineers and are designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts.")
[38] U.S. Army Corps of Engineers, Decision Document - Nationwide Permit No. 5, at 1, *available at* http://www.usace.army.mil/cw/cecwo/reg/nwp/NWP_05_2007.pdf.
[39] Southern Company questions whether it makes sense to have a full-blown EIS at the GAP or SAP stage because completion of an EIS will be time-consuming and will defer the commencement of simple and low-impact data gathering. An EIS at this stage would also be based on a highly speculative commercialization scenario. If, however,

this path would seriously threaten the viability of the program. EISs take years and sometimes millions of dollars to complete, and easily could move a project from being marginally viable to unviable. If an applicant must fund an EIS before commencing the collection of data which is needed to determine commercial viability, the applicant or its financier may simply find better uses of their investment capital that promise a more timely return.

In addition, where the applicant is compiling a SAP in a non-competitive lease, the applicant likely is not very familiar with the site and is not sure whether it will proceed to develop the site commercially. The applicant is putting up a meteorological tower to verify commercial viability; its plans to move forward to a commercial phase are contingent on the results of the data collection. At this stage, applicants are not able to hypothesize that commercial development is viable or the size of a potential commercial development until after the data collection and technology testing phase of a lease is completed and data has been fully analyzed. In these situations, we would encourage MMS to adopt a phased approach to environmental documentation which normally envisions performance of an EA that focuses on the impacts of the data collection or technology testing activities and which could be followed by environmental documentation for the COP, as appropriate, if and when the applicant decides to proceed with planning and development of a commercial development.

Other agencies and case law have supported this approach to environmental documentation where the different phases of a project are evaluated separately for NEPA purposes.[40] The Ninth Circuit, in particular, has ruled that where subsequent phases of a project are speculative or prior phases are independent of future phases, the NEPA documentation only needs to be completed for the phase currently at hand.[41] There are no requirements that an applicant complete environmental documentation for all phases of a project, particularly when in the first phase the applicant has not yet determined whether there will be future phases at all. If the phase at hand has "independent viability" or "independent utility," then environmental documentation must be completed on that phase and that phase alone. Whether or not there will be subsequent phases is truly speculative, particularly given that this is an infant industry with an interruptible power source whose commercial viability at any given site is very much an open question.[42] Indeed, the

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MMS intends to require an EIS to be completed for a GAP or SAP on the basis that MMS would like to see the GAP or the SAP contain a hypothetical construction scenario for a future build-out under a COP, then requiring an EIS at this early stage could only be justified if a future COP based closely on this scenario did not require a duplicative EIS. A future COP that stays within the "building envelope" contemplated in the GAP or SAP and evaluated in the EIS should be tiered off of the original SAP/GAP EIS and should require at most an Environmental Assessment. No more than one EIS should be required from a project's start to finish. If MMS decides it is preferable to have the EIS completed at the earlier hypothetical stage of a GAP or SAP, a second, duplicative EIS should not be expected to be completed again at the COP stage, unless significant changes are made to the plans.

[40] See, e.g., *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1118 (9th Cir. 2000) ("We use an 'independent utility' test to determine whether an agency is required to consider multiple actions in a single NEPA review pursuant to the CEQ regulations.").

[41] In evaluating the NEPA process for an Army Corps of Engineers project, the Ninth Circuit stated, "The utility of this part of the project does not depend upon the completion of the later phases of the project. It would not be unwise or irrational to undertake the building of Phase I even if it was determined that the later phases could not be constructed." *Id*. at 1118. Similarly, it would be not be "unwise or irrational" for an applicant to the MMS AEAU program to pursue a GAP or a SAP and then, based on the results of the GAP or SAP, to decide not to pursue commercial development.

[42] Even in a developed industry with high returns, it has been recognized that the changes of commercial development are low and thus speculative. A Tenth Circuit Court of Appeals case emphasized that development has

court pointed out that an "early" phase will often have "value in and of itself."[43] It emphasized that where "the utility of this part of the project does not depend upon completion of the later phases of the project" and where "[i]t would not be unwise or irrational to undertake the building of Phase I even if it was determined that the later phases could not be constructed," the phases should be viewed as independent and should be evaluated independently for NEPA purposes.[44]

In addition to the Army Corps of Engineers, BLM adopts this approach of requiring NEPA documentation to be completed by phase rather than all upfront. In particular, BLM's onshore wind development policy specifies that NEPA documentation should be undertaken progressively, at each unique phase of the project.[45]

Besides this level of documentation being unnecessary at the data collection phase, these burdens likely will have a significant impact on whether such projects are commercially viable. Completing any environmental documentation is often a several-year process and results in significant consulting fees. A project sponsor will likely have difficulty obtaining project financing if an EIS is required to be completed to install a simple data collection device.

C. Funding for NEPA Documentation

Southern Company understands that MMS intends to contract with a third party consultant to complete the necessary NEPA documentation and to require the applicant to pay the consulting fees. Southern Company does not have a problem with this arrangement as long as the applicant is closely involved in the NEPA process and is able to participate in the selection of the consultant and in the establishment of a schedule and budget for the work. Several agencies, including the Federal Energy Regulatory Commission ("FERC"), allow the applicant to assist in

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only a one in ten chance of occurring on most oil and gas leases: "Full field development is typically an extremely tentative possibility at best at the leasing stage. . . . [T]he steps from leasing to full field development are not 'so interdependent that it would be unwise or irrational to complete one without the others'—the benchmark signaling the need for a cumulative impact EIS. To require a cumulative EIS contemplating full field development at the leasing stage would thus result in a gross misallocation of resources, 'would trivialize NEPA and would "diminish its utility in providing useful environmental analysis for major federal actions that truly affect the environment"' NEPA's goal is not to generate paperwork evaluating speculative possibilities that the odds favor will never occur." (citations omitted). *Park County Resource Council v. United States Department of Agriculture*, 817 F.2d 609, 623 (10th Cir. 1987).

[43] 222 F.3d at 1117.

[44] 222 F.3d at 1118 (citing, in part, *Trout Unlimited v. Morton*, 509 F.2d 1276, 1285 (9th Cir. 1974) ("finding that an EIS must cover a whole project when '[t]he dependency is such that it would be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken'")).

[45] Bureau of Land Management, "Wind Energy Development Policy," Instruction Memorandum No. 2006-216, Aug. 24, 2006, *available at* http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2006/2006-216__.html ("The environmental review should not address wind energy development facilities, as the installation of wind turbines are not proposed during site testing and monitoring. The reasonably foreseeable development discussions in the environmental analysis for a site testing and monitoring right-of-way application should focus on anticipated installation of additional wind monitoring facilities during the term of the right-of-way grant. Typically only a small number of wind energy site testing and monitoring authorizations ever lead to actual wind energy development projects. Therefore, the reasonably foreseeable development discussion should not focus on uncertain future development scenarios. However, the cumulative impacts of other wind energy site testing activities and any other reasonably foreseeable activities that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis.").

the selection of the consultant to be retained for completing environmental documentation and in the setting of a proposed schedule for the work to be completed.[46] Southern Company encourages MMS to adopt the same or similar approach for the AEAU program.

D. Drafting Environmental Assessments

The Department of Interior's Department Manual makes clear that applicants should be permitted to prepare a draft Environmental Assessment.[47] This is explicitly authorized under 40 C.F.R. § 1506.5(b) of the CEQ Regulations. In developing a GAP, SAP or COP, Southern Company encourages MMS to confirm that the applicant may help expedite the NEPA process by preparing a draft Environmental Assessment as permitted by the DOI Department Manual and the CEQ Regulations, subject to MMS's independent review of the draft EA and MMS's authority to revise, modify, or otherwise reorient the final EA. Other agencies, including the FERC[48] and the Army Corps of Engineers, permit applicants to prepare draft Environmental Assessments.[49]

As the AEAU is inaugurated and Congress continues to encourage the development of renewable energy, it is likely that demands on MMS resources will substantially increase. Given these competing demands, it will be more efficient for MMS and will promote expedited development of offshore resources for MMS to review applicant-prepared EAs, rather than to draft its own EA in the first instance.

Southern Company would like to emphasize the importance of MMS closely coordinating and communicating with the applicant regarding Environmental Assessments. Regardless of whether MMS allows the applicant to draft the Environmental Assessment or hires a third-party consultant to complete it, frequent and open communication with the applicant is critical to ensuring the highest quality documentation is produced. The applicant will be providing much of the information required to complete the EA in either case, and understands the proposed project better than anyone. Close communication and coordination with the applicant will ensure that the most complete EA is produced and that it is produced expeditiously.

E. Timing for Environmental Documentation for Non-competitive Lease

It is unclear why MMS has proposed to give the applicant only 60 days to prepare the GAP/SAP and all required environmental documentation for a non-competitive lease while applicants for

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[46] Federal Energy Regulatory Commission, *Applicant Handbook for Using Third-Party Contractors in Support of the Application Process for an Electric Transmission Construction Permit - for Electric Transmission Facilities Located in National Interest Electric Transmission Corridors*, Sections 1.4 and 2.6, *available at* http://www.ferc.gov/industries/electric/indus-act/siting/third-party-handbook.pdf#xml=http://search.atomz.com/search/pdfhelper.tk?sp_o=2,100000,0.

[47] U.S. Department of Interior, *Department Manual*, 516 DM 3.6(A) (May 27, 2004).

[48] See, e.g., Federal Energy Regulatory Commission, *Guidance Manual for Environmental Report Preparation*, at 14, August 2002, *available at* http://www.ferc.gov/industries/gas/enviro/erpman.pdf ("The applicant may choose to file an applicant-prepared DEA . . ."). See also Federal Energy Regulatory Commission, "Proposed Interim Guidelines for Applicant-Prepared Draft Environmental Assessments," September 1991, *available at* http://www.ferc.gov/industries/gas/enviro/applcgrf.pdf.

[49] The process would also be facilitated if MMS were able to specify the information it will require and the format of the EA prior to submission to MMS.

competitive leases are given six months to produce this documentation. Non-competitive lease applicants should be given at least six months as well, just as with the commercial lease. Whether a project is leased competitively or non-competitively, the physical impacts to be evaluated in a SAP or GAP will be the same.

F. Timing of CZMA Consistency Determinations

Section 285.612(c) notes that MMS will forward the Coastal Zone Management Act ("CZMA") consistency determination to the state(s) "after all informational requirements for the SAP are met."[50] It is not immediately clear what this means in terms of timing. This suggests that MMS does not intend to send the consistency determination to the state for some time.

If MMS is planning to first issue a completeness determination of the SAP package, Southern Company suggests that this be done within a certain defined time frame, like 30 days. But MMS's determination of the completeness of the SAP should not delay MMS's submission of the CZMA certification to the state. That certification should be forwarded immediately to the state to ensure that the consistency clock is started. MMS's review of the completeness of the documentation has no legal effect under CZMA and should not hold up the process of obtaining the CZMA approvals from the relevant state.

Indeed, federal rules provide that where the leases in question fall under subpart D of the CZMA, the applicant—not the federal agency—shall send the consistency certification directly to the state.[51] The proposed MMS rule is inconsistent with this.

Southern Company recommends that MMS revise the rule to clarify that for competitive leases, the CZMA consistency determination will be forwarded to the state immediately after the applicant's submission of the SAP and not after review and approval of the entire plan. For non-competitive leases, the applicant should forward the consistency determination directly to the state. In either case, in order to expedite and facilitate the development of offshore alternative energy facilities, the CZMA six-month clock should commence as soon as possible.

G. Timing of GAP/SAP/COP Completeness Determination

As mentioned elsewhere, Southern Company encourages MMS to process plan submissions as quickly as possible in order to facilitate the development of offshore renewable energy. Southern Company recommends that at a minimum, MMS should determine completeness of the GAP/SAP/COP within a specific time frame (e.g., 30 days for the SAP/GAP and 60 days for the COP). This could be contained in Sections 285.612(a), 285.628(a), and 285.647(a).

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[50] A similar provision is made with respect to the COP at Section 285.628(c) and with respect to the GAP at Section 285.647(c) and this comment is equally applicable to those sections.

[51] 15 C.F.R. § 930.57(a): "Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. *At the same time, the applicant* shall furnish to the State agency a copy of the certification and necessary data and information" (emphasis added).

H. Structure of SAP and COP is Unnecessarily Burdensome

In order to achieve the national goal of maximizing offshore alternative energy development, MMS needs to establish a structure for developers that is as streamlined as possible. The process of going from lease to commercialization should have as few steps as possible. To this end, in many instances, requiring both a SAP and a COP seems both unnecessary and burdensome. Southern Company encourages MMS to give thought to combining these two plans rather than having to draw out the process over a long period of time and to duplicate efforts. In some cases, it may be desirable for applicants to go through both steps, but in others, an applicant may be ready for commercialization right away. MMS could greatly facilitate development by combining the SAP and COP and their associated environmental documentation requirements where appropriate and desirable.

I. Documentation Requirements for Applicants Pursuing both Limited and Commercial Leases

Applicants who decide to first pursue a limited lease or a lease under the Interim Policy and then later decide to pursue a commercial lease on the same site should not be required to produce the same environmental documentation twice. A limited lessee or Interim Policy lessee should be able to avoid a SAP for a subsequent commercial lease on the same property if the lessee has already completed a GAP, which has similar contents as the SAP.[52] MMS should make clear that if the applicant has completed a limited lease either under the Interim Policy or the final rule and pursues a commercial lease on the same site, it should not be forced to complete a SAP and duplicate the site assessment and environmental reviews. At that point, the applicant should just be required to complete whatever reviews and documentation are necessary for the COP. Southern Company suggests that MMS make this clarification in Sections 285.601 and 285.605.

J. Archaeological Documentation

Reiterating the earlier point about the importance of greater integration, Southern Company requests MMS to clarify that a GAP requires only a description of how the archaeological survey specified in Section 285.645[53] will be performed and that an archaeological survey, report and consultation is not required in a GAP unless the circumstances specified in Section 285.802(a)(1) exist.

K. Clarify Inconsistency re OCS plan under CZMA

Southern Company requests MMS to clarify what subsection of the CZMA regulations applies to non-competitive leases. It is not clear from the Proposed Rule whether a GAP or SAP prepared for a non-competitive lease is considered part of an OCS plan under CZMA regulations.

[52] The required contents of the SAP are listed in Section 285.610 and the required contents of the GAP are listed in Section 285.645.
[53] 73 *Fed. Reg.* 39,490 (July 9, 2008) ("The results of the archaeological resource survey, if required.").

In the preamble to the Proposed Rule, MMS appears to take two different positions. In one part, it suggests that Subpart D of the CZMA regulations will apply to a non-competitive lease,[54] but in another it appears to treat SAPs, GAPs and COPs as OCS plans which would fall under Subpart E of the regulations, regardless of whether the SAPs, GAPs, or COPs are issued competitively or non-competitively.[55] This appears to be inconsistent and would benefit from some clarification in the final rule.

L. Revised SAP Should Only be Required for Major Changes

Southern Company encourages MMS to specify that a revised SAP will be required only for major changes to the plan. Field changes without significantly different effect on the resources involved should be allowed to proceed without stopping the process and submitting a revised SAP which may entail additional NEPA documentation. Additional NEPA or other environmental documentation should only be required when "(i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[56] Neither field changes during installation, nor routine repairs, replacement, and maintenance thereafter—all of which fall within the general scope of reviews performed for the GAP or SAP—should trigger the need for additional NEPA or other environmental reviews.

For example, a revised SAP with additional NEPA and other environmental reviews likely would be justified if a lessee proposed to increase the number of meteorological towers on a site from one to three. However, if a lessee needed to move the base of a met tower thirty feet to avoid bedrock, that should not require the submission of a revised SAP and completing a separate NEPA review. In addition, it is not clear from the Proposed Rule whether a simple change like switching out a blade of a wind turbine would trigger added documentation requirements or not. Routine repair, replacement, and maintenance that will have minimal impacts previously assessed, should not provide an occasion for additional environmental review.

In sum, Southern Company believes that field changes and repair, replacement, and maintenance activities are not clearly addressed in the Proposed Rule. Unless MMS clarifies this situation, lessees will be concerned that any type of field change, repair, replacement, or maintenance may trigger a NEPA review, leading to potentially dangerous and costly interruptions in field installations or deferrals in needed maintenance.

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[54] 73 *Fed. Reg.* 39,401 (July 9, 2008) ("We would treat alternative energy non-competitive lease issuance and SAP or GAP approval as Federal licenses or permits (as defined by 15 C.F.R. 930.51) and follow the requirements of subsection 307(c)(3)(A) of the CZMA and 15 CFR Part 930, Subpart D, as shown in Table 1.").

[55] 73 *Fed. Reg.* 39,419 (July 9, 2008) ("For purposes of Federal consistency, MMS will treat SAPs, COPs and GAPs as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR Part 930, subpart E.").

[56] 40 C.F.R. § 1502.9(c).

VI. SUBPART G - FACILITY DESIGN, FABRICATION AND INSTALLATION

A. CVA is Unnecessary and Burdensome

Southern Company believes that MMS's proposed requirements to engage a certified verification agent ("CVA") to check over the applicant's engineering and design work[57] will be costly, duplicative, and time-consuming.

The lessee's professional engineer ("PE") will be responsible for completing and overseeing the design, documentation, construction, operation and repair of all facilities. PEs are part of a tightly self-regulated profession and depend on reputation for advancement in their careers. The PE's stamping of the design documents should be certification enough that the design work has been completed to the high standards of the engineering profession.

It is not clear why MMS would require a second PE to check the first PE's work. We are not aware of this type of duplicative requirement being in place for most other industries[58] and do not understand why MMS feels that offshore alternative energy facilities require double certification. Even in much more dangerous and high environmental impact sectors, with far greater safety issues at stake, like dam construction, a double certification is not required. Offshore alternative energy facilities are not occupied by human inhabitants, generally have extremely low environmental impact, and safety is a much less significant issue than with other forms of energy development. The requirements listed in Sections 285.707-710 are already required to be undertaken by a PE employed by the lessee; they should not be conducted a second time.

Requiring a lessee to engage a CVA would double the engineering costs and substantially lengthen the time required to complete a project, possibly threatening its commercial viability. It is not clear what added benefit would accrue from such a requirement. Southern Company strongly encourages MMS to delete these sections entirely or, in the alternative, to reserve such a requirement for particularly high-impact or higher-risk offshore energy activities and to justify the necessity for such an unprecedented requirement in such instances.

VII. SUBPART H - REPAIRS AND INSPECTIONS

A. Notice of Repairs Should be for Emergencies or Major Repairs Only

Section 285.815(b) requires lessees to notify MMS within three business days of repairing any facility associated with the lease. Southern Company suggests that this requirement may not be appropriate for routine repairs and may be better suited to repairs that are undertaken on an emergency basis or that will require environmental documentation. The rule is not clear under what circumstances this notification is required. For instance, does changing a light bulb require the lessee to file a report to the MMS? Southern Company recommends that this section of the rule be clarified to require notification only for emergency or major repairs.

[57] See Sections 285.705-712.

[58] Offshore oil and gas production is an exception, but one which has emerged due to the substantial risks to the marine environment from spills or leaks due to design or implementation failures.

B. Inspections of Offshore Sites Should be Scheduled and Accompanied

The proposed inspection provisions in Sections 285.820-823 provide that MMS may conduct scheduled and unscheduled inspections of offshore facilities. Southern Company requests that MMS provide for slightly different inspection provisions than are applied in other offshore contexts. Unlike oil and gas platforms in the Outer Continental Shelf, offshore alternative energy facilities like wind turbines have few opportunities to produce pollution and will almost always be unmanned, contrasting with the main rationales for the unscheduled inspections in the offshore oil and gas sector.[59] In addition, these are potentially dangerous facilities to approach and "board," and an unscheduled and unaccompanied inspection may create significant safety and liability concerns for a lessee.

Southern Company recognizes the need and benefit of MMS retaining an inspection right over these facilities. We suggest that a reasonable alternative approach that would better fit this context would be to have the MMS inspector arrive, scheduled or unscheduled, at an associated onshore facility of the lessee. At that point, the MMS inspector can inspect the onshore records and associated facilities and then can schedule a visit to the offshore site(s) within a reasonable period of time. Inspections of offshore facilities should not be unscheduled but should be requested of the lessee with reasonable time to ensure good travel weather, available vessels, and availability of a responsible engineer to accompany the inspector. Safety procedures for these visits will need to be undertaken to minimize the chances of the MMS inspector being hurt. For liability and safety reasons, any inspectors entering the lessee's property must be accompanied by appropriate lessee personnel.

VIII. SUBPARTS F AND H - ENVIRONMENTAL REQUIREMENTS

A. Integration

As discussed above, we believe the environmental documentation requirements in Sections 285.801-807 of the Proposed Rule are confusing. It is not clear how they fit in with the rest of the rule, particularly Subpart F. Environmental documentation should be integrated into the various plan requirements and should be better explained.

B. Lead Agency Obligated to Set Time Limits

MMS is asserting lead agency status and will act as project manager/coordinator under Sections 285.203 and 285.612 for NEPA and CZMA reviews. Southern Company has no opposition to MMS taking this role, and supports the lead agency concept. However, MMS should be aware that for transmission facilities, which will comprise a part of all offshore electricity projects, the Department of Energy ("DOE") has been assigned the lead agency role in Section 1221(h) of the Energy Policy Act of 2005.[60] DOE has entered into a Memorandum of Understanding regarding

[59] See U.S. Department of the Interior, Minerals Management Service, *Department Manual*, Part 650, Operations: Chapter 1 Offshore Inspection Program, at 650.1.6B(2), Aug. 7, 2000.
[60] 16 U.S.C. § 216(h).

implementation of this authority with a variety of cooperating agencies, including the Department of Interior.

If MMS assumes a lead agency role for offshore alternative energy facility permitting, it should use this status to simplify and expedite the process of obtaining all other necessary authorizations. Having a program manager that will set up a schedule and coordinate all the regulatory requirements under NEPA, the Endangered Species Act, the Magnuson-Stevens Act, the Coastal Zone Management Act, the National Historic Preservation Act, the Clean Air Act, and other laws will provide much needed guidance and direction and would be a very welcome feature for applicants. The CEQ Regulations in fact urge agencies to adopt set time limits to help provide certainty and to move the NEPA process along.[61] MMS should also undertake to set a schedule for the other regulations and should take an active role as lead agency in coordinating and expediting the reviews under these other statutes. By installing a lead agency not only for NEPA but for all of the other federal environmental requirements, applicants may, assuming the requirements of environmental review and approval are reasonably implemented, obtain some comfort that there will be reasonable bounds on the application and environmental review process. Furthermore, other agencies, such as the United States Army Corps of Engineers, will be able to expedite their procedures by coordination with and reliance on MMS.

C. Adaptive Management Needs to be Better Defined

MMS suggests that it will employ adaptive management techniques throughout the term of a lease.[62] Adaptive management is a very protean and imprecise concept which means different things to different people. The lease document should be site-specific and should clearly specify the scope of any adaptive management activities that MMS might require so applicants know prior to signing leases what the full extent of their obligations will be. It would not be fair for the agency to add requirements after the signing of a contract. The lease should contain the final "bargained-for" terms establishing the parties' rights and obligations under the contract. Adding burdens and obligations after the fact to a privately negotiated contractual relationship would be unfair. In addition, undefined adaptive management in this context would have the potential to escalate costs in an unpredictable manner and could threaten the viability of a project.[63]

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[61] CEQ Regulations at 40 C.F.R. § 1501.8(a) ("The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.").

[62] 73 *Fed. Reg.* 39,429 (July 9, 2008).

[63] In fact, the Department of Interior's new adaptive management policy and Technical Guide points out that adaptive management is not warranted in all circumstances. U.S. Department of Interior, *Department Manual*, Adaptive Management Implementation Policy, 522 DM 1, February 1, 2008; U.S. Department of Interior, *Adaptive Management: The U.S. Department of Interior Technical Guide* (2007). Adaptive management is used where uncertainties about the impacts of management decisions *on ecological systems* abound. Indeed, the DOI Technical Guide cites examples of such uncertainties: "the control of water releases from a dam, direct manipulation of plant or animal populations through harvesting, stocking, or transplanting, and manipulations of ecosystems through chemical or physical changes to habitats." U.S. Department of Interior, *Adaptive Management: The U.S. Department of Interior Technical Guide* 2 (2007). It notes that "[a]daptive management acknowledges uncertainty about how natural resource systems function and how they respond to management actions. Adaptive management is designed to improve understanding of *how a resource system works*, so as to achieve management objectives." *Id.* at 7 (emphasis added).

A recognition of the need for certainty has underpinned the Fish and Wildlife Service's ("FWS") No Surprises Policy.[64] While not an exact analogy, this policy has provided meaningful certainty for landowners proposing Habitat Conservation Plans ("HCP") under the Endangered Species Act. Once the plans are negotiated between the landowner and the FWS, no further mitigation or adaptive management is required beyond those measures specified in the plan. The HCP in that context is analogous to the lease in this context. FWS policy states that:

> When an HCP, permit, and [Implementing Agreement], if used, incorporate an adaptive management strategy, it should clearly state the range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty. This range defines the limits of what resource commitments may be required of the permittee. This process will enable the applicant to assess the potential economic impacts of adjustments before agreeing to the HCP.[65]

For an offshore lease, the applicant and MMS should adopt FWS's approach and negotiate terms and obligations upfront governing the scope of adaptive management and then each side should live with those terms throughout the lease term.

Southern Company is concerned that the adaptive management provisions of the Proposed Rule may impose unbargained-for, overly burdensome, and costly obligations for the lessee.[66] To give greater certainty to applicants that the rules will not change midstream, MMS should specify in the lease the site-specific adaptive management obligations, if any, it may be requiring during the lease term and should agree that no additional adaptive management measures will be required during the lease term.

While offshore alternative energy is a relatively new field in the United States, the uncertainties in this sector lie more with commercial viability than with how a management decision will affect natural resources. As noted elsewhere in these comments, the offshore alternative energy sector is likely to have minimal environmental impacts compared to the offshore oil and gas industry, or compared to onshore areas over which the Department of Interior has jurisdiction. Adaptive management seems entirely appropriate in contexts involving unknown environmental feedbacks. However, the Technical Guide points out that adaptive management may be inappropriate in this context: "[a]daptive management is first and foremost an approach to the *management of natural resources* and not simply an opportunity to learn. Thus, an application of adaptive management must involve a real choice among management alternatives that affect resource systems." *Id*. at 9 (emphasis added). The leases and MMS actions at question here in the Proposed Rule do not deal with management of natural resource systems. While MMS decisions may impact the environment, offshore alternative energy leases do not affect resource systems in a way contemplated by the DOI Adaptive Management Policy.

[64] 65 *Fed. Reg.* 8859 (Feb. 23, 1998); U.S. Fish and Wildlife Service, Endangered Species Program, "'No Surprises' Questions and Answers," Jan. 16, 2008, available at http://www.fws.gov/endangered/hcp/NOSURPR.HTM.

[65] 65 *Fed. Reg.* 35,253 (June 1, 2000).

[66] Indeed, the Department of Interior Adaptive Management Technical Guide notes that "[t]hough it is commonly thought that an adaptive management approach can produce results quickly at low cost, the opposite is more likely to be true." U.S. Department of Interior, *Adaptive Management: The U.S. Department of Interior Technical Guide* vii (2007).

IX. SUBPART I - DECOMMISSIONING

A. Decommissioning Obligation

The decommissioning obligation for a meteorological tower should not accrue at a minimum until after the development lease is awarded and MMS approves the plan. It does not make sense to require automatic decommissioning of a facility upon expiration of a data collection lease when there is a good possibility that the meteorological tower may continue to be of some use to the holder of the development lease, whether the holder is the prior lessee or a new developer. To avoid economic waste and to provide more robust data in the future, MMS should not trigger decommissioning until a reasonable period has passed to determine whether a development lease will be sought and awarded, and the development lessee disclaims any interest in the continued operation of the meteorological tower.

B. Duration of Decommissioning

The Proposed Rule suggests that all facilities must be removed within one year of the termination of a lease.[67] The Proposed Rule should not specify a hard and fast term for decommissioning—rather, the term of decommissioning should be a case-by-case determination in the COP based on site-specific circumstances, such as the size of the facility, the existence of seasonal restrictions on decommissioning activity, and other appropriate considerations. This should be decided when the COP is approved rather than having a one-size-fits-all requirement in the rule regardless of significantly varying circumstances. For example, a site that has 160 wind turbines may take significantly longer than one year to decommission. In addition, in some areas, migrating species or severe weather will significantly limit the number of months available in a given year to work on a site. Moreover, to the extent the rule continues to provide a target duration, the expectation should be at least a two-year decommissioning period to account for larger facilities or those in more sensitive environmental areas. In sum, the timeline for decommissioning should be no less than two years for commercial facilities and should be a case-by-case determination in the COP based on the size of the facility and its location.

C. Decommissioning in Place

With regard to facilities that lie on or beneath the ocean floor, there will often be less environmental impact if MMS allows the facilities to be decommissioned in place rather than requiring them to be dug up, removed and transported back to shore to be landfilled. Platforms, for example, often become useful artificial reefs which can benefit sea life. Removing these facilities and associated cables significantly stirs up sediment, thus creating an unnecessary environmental impact.

Our recommendation is consistent with MMS's pipeline regulations which authorize pipelines to be decommissioned in place provided they do not present a hazard to navigation or have adverse environmental effects.[68] Cables and foundations are no different than pipelines in this regard. When the facility does not constitute a hazard to navigation, commercial fishing, unduly interfere

[67] Sections 285.433 and 285.902.
[68] 30 C.F.R. § 250.1750 (2007).

with the OCS or cause adverse environmental effects, the regulations should provide the flexibility to allow decommissioning in place, especially where these facilities may even have environmental benefit. Moreover, if MMS has decided to approve decommissioning in place for some foundations or pipelines, the applicant's decommissioning liability should be terminated for such facilities.

X. CONCLUSION

Southern Company appreciates the opportunity to provide comments on the Proposed Rule. We look forward to seeing a final rule that takes into consideration the needs and interests of offshore alternative energy developers, and accounts for the national interest by streamlining application requirements and otherwise promoting rapid development of these forms of energy. We hope that these comments provide useful perspective and insight into a balanced approach to offshore alternative energy resources in the OCS. We look forward to seeing detailed responses to submitted comments in the preamble to the final rule. Please do not hesitate to contact us if we can provide additional information or clarification on any of these points.