UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management
Office of Renewable Energy Programs

and

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Hydropower Licensing

BOEM / FERC Guidelines on Regulation of Marine Hydrokinetic Energy Projects on the OCS

Version 3
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Guidance Disclaimer

Except to the extent that the contents of this document derive from requirements established by statute, regulation, lease, contract, or other binding legal authority, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding legal requirements, related agency policies, and technical issues.

Cancellation

This guidance document cancels and supersedes "BOEM/FERC Guidelines on Regulation of Marine and Hydrokinetic Energy Projects on the OCS," version 2, dated July 19, 2012, and will remain in effect until cancelled.

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Chapter 1. Introduction

1.1. What is the purpose of this document and how is it organized?

The staffs of the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) and the Federal Energy Regulatory Commission (Commission or FERC) are issuing these guidelines as part of an ongoing effort to clarify jurisdictional responsibilities for marine hydrokinetic (MHK) projects on the Outer Continental Shelf (OCS). This document replaces the guidelines provided in version 2, dated July 19, 2012. The goal is to develop a cohesive, streamlined process that will help accelerate the development of MHK (i.e., wave, tidal, and ocean current) energy projects, consistent with the Memorandum of Understanding (MOU) between the U.S. Department of the Interior and FERC (executed April 9, 2009, see Attachment A - Memorandum of Understanding Between the Department of the Interior and the Federal Energy Regulatory Commission, April 9, 2009).

As recognized by the MOU, BOEM has jurisdiction to issue leases on the OCS for MHK projects, and FERC has jurisdiction to issue licenses for these same projects. This document is designed to provide information to applicants and stakeholders about the responsibilities of each agency and how to best navigate the process of obtaining an MHK lease and license on the OCS. It uses a format of frequently asked questions (FAQs) to address regulatory issues. The FAQs are divided into the following topic areas: introduction, general requirements and definitions, procedures for obtaining a lease and license, municipalities and competition, lease and license terms, financial assurance requirements, fee structures, hybrid project considerations, straddle project considerations, and contact information.

These guidelines are intended to explain and provide more detail about the roles of BOEM and FERC in authorizing the use of the OCS for MHK activities. At this time, little information relating to design, construction, and operations requirements, or to inspection and compliance procedures, is included. Such information will be developed as MHK projects are authorized, and subsequently may be incorporated, as appropriate. This document is not a substitute for the statutes and regulations governing BOEM renewable energy leases and FERC licenses. It is not intended to be a rule or regulation. BOEM and FERC may later promulgate regulations, if necessary. Further, this guidance is not designed or intended to anticipate every possible scenario that could arise in developing MHK projects on the OCS. For specific guidance, prospective lessees, licensees, and other participants should rely on relevant statutes and regulations, and information and instructions provided by agency contacts, supplemented as necessary with your own source for legal advice.

These guidelines may receive additional revisions periodically, as warranted by statute and regulation or policy changes as lessons are learned during MHK development on the OCS. The dates of any revisions will be annotated in this document. The most current version is available at **https://www.boem.gov/guidance** and **https://www.ferc.gov/industries/hydropower/gen-info/licensing/hydrokinetics.asp .**

1.2. Who should use these guidelines?

Use these guidelines if you are interested in developing an MHK project on the OCS. Contact the agencies to discuss individual project proposals.

Chapter 2. General Requirements and Definitions

2.1. What is the OCS?

The OCS includes all submerged lands, subsoil, and seabed lying between the seaward extent of the States' jurisdiction (approximately 3 nautical miles from shore, or 3 marine leagues for Texas and the Gulf coast of Florida) and the seaward extent of federal jurisdiction (approximately 200 nautical miles or more from shore). If you wish to determine the exact boundary or coordinates of the OCS near your project area, please contact BOEM.

2.2. What is an MHK project?

For the purposes of this paper, an MHK project generates electricity from the motion of waves or the unimpounded flow of tides, ocean currents, or inland waterways.[1] An MHK project on the OCS would likely use wave- or ocean-current-based technologies.

2.3. Who can hold a lease and a license for an MHK project on the OCS?

To hold both a lease and a license for an MHK project on the OCS in accordance with both the applicable BOEM and FERC regulations, you must be one of the following nonfederal, qualified entities as identified by the Federal Power Act (FPA), the Outer Continental Shelf Lands Act (OCSLA), and their implementing regulations: (1) a citizen of the United States; (2) an association of citizens of the United States; (3) a corporation organized under the laws of the United States or any state; (4) a state; or (5) a municipality. Federal agencies with congressional authorization to operate an MHK project on the OCS will not need a FERC license, but will still need to obtain a lease from BOEM before doing so.

2.4. In what instances does a proposed project require a lease from BOEM?

A proposed MHK project generally will require a BOEM lease in accordance with 30 CFR 585.104 if the following are true:

- The project will produce or support the production, transportation, or transmission of energy;
- The project is to be located on the OCS; and
- The project involves the temporary or permanent attachment of a structure or device to the seabed. (Note that BOEM will consider proposed MHK activities on a case-by-case basis to determine if a lease would be required. More information can be found at **https://www.boem.gov/guidance**. Contact BOEM for further explanation.)

[1] The term, "marine hydrokinetic project," or "MHK project," encompasses ocean thermal energy conversion (OTEC), which falls under the jurisdiction of the National Oceanic and Atmospheric Administration. However, this paper uses the term MHK only as it applies to technologies under BOEM's leasing responsibility and FERC's licensing responsibility, primarily referring to ocean wave and ocean current technologies.

2.5. In what instances does a proposed project require a license from FERC?

Unless you are a federal agency with congressional authorization, you generally must have a FERC license to operate a hydrokinetic project on the OCS. However, project developers may conduct limited testing under a BOEM lease without a FERC license if: (1) the technology in question is experimental; (2) the proposed facilities are to be used for a short period for the purpose of conducting studies necessary to prepare a license application or providing an educational experience; and (3) power generated from the test project would not be transmitted into or displaced from the interstate electric grid and would, therefore, not constitute "developing electric power" for purposes of the Federal Power Act (FPA). *See Verdant Power LLC*, 111 FERC ¶ 61,024 (2005), *order on reh'g*, 112 FERC ¶ 61,143 (2005). Testing as part of an educational experience fulfills the purpose of conducting studies necessary to prepare a license application. *See Maine Maritime Academy*, 130 FERC ¶ 62,234 (2010).

2.6. Will a project proposed to be located in a National Marine Sanctuary, a National Park, National Monument, or National Wildlife Refuge require a BOEM lease or a FERC license?

Neither BOEM, through its leasing authority, nor FERC, through its licensing authority, can approve a project in a National Park or a National Monument located on the OCS. For BOEM, the same restriction applies to National Marine Sanctuaries and National Wildlife Refuges located on the OCS. Depending on the individual authorization, FERC may be authorized to issue MHK licenses without a BOEM lease in such sanctuaries and refuges. Contact FERC with specific questions.

2.7. Do I need a lease and a license for an MHK project offshore from a U.S. territory or possession?

BOEM does not have the authority to issue leases for MHK or other renewable energy resources in federal waters located offshore of a U.S. commonwealth or territory. The statutory definition of the OCS limits the BOEM leasing authority to submerged lands lying seaward and outside the state submerged lands as referenced in the Submerged Lands Act, thereby excluding territories or possessions of the United States. Although you will not need a BOEM lease, you generally will be required to obtain a FERC license to construct or operate an MHK project offshore a U.S. territory or possession.

2.8. What types of leases does BOEM issue?

BOEM has the authority to issue three types of leases for MHK projects: commercial leases and limited leases in accordance with 30 CFR 585.202, and leases to conduct research activities in accordance with 30 CFR 585.238 ("research leases"). BOEM will issue a lease on a competitive basis, as provided under 30 CFR 585.210 through 585.225, unless BOEM determines no competitive interest exists in obtaining that lease. Please consult BOEM to discuss which type of lease may be most appropriate for your proposed project.

2.9. How can I test an MHK pilot project on the OCS in cases where both a BOEM lease and a FERC license are required?

On a case-by-case basis, BOEM will consider issuing a lease for a test or pilot project, and FERC will consider granting licensing waivers and modifications to enable expedited processing of pilot project license applications. (See section 2.12 below.) Some projects, though having a

test element, may be best suited for a BOEM commercial lease and/or the standard FERC licensing process. As with commercial projects, BOEM and FERC will coordinate their processes, to the extent practicable to accommodate the specific situation.

2.10. When will BOEM consider issuing a limited lease?

BOEM will consider issuing a limited lease for OCS MHK projects on a case-by-case basis. Generally, a limited lease is appropriate for projects of limited scope, for instance in cases where the duration of activities associated with the proposed project is limited to five years, and any power generated by the project would be limited to a small amount (e.g., 5 megawatts) by the terms and conditions of the lease. A developer should contact BOEM to discuss whether a limited lease may be appropriate for a specific proposal.

2.11. When will BOEM consider issuing a section 238 research lease ?

BOEM will consider issuing such a lease for OCS MHK projects on a case-by-case basis. Such leases will only be issued to a federal agency or a state for renewable energy research activities that support the future production, transportation, or transmission of renewable energy after a determination of no competitive interest (30 CFR 585.238). BOEM's renewable energy regulations provide flexibility as to potential lease terms; many lease terms and conditions would be negotiated on a case-by-case basis between the Director of BOEM and the governor of the requesting state or the head of the federal agency, or their designated representative.

2.12. When will FERC consider expedited processing for a pilot project license?

To be granted the process waivers and modifications for expedited processing of a pilot project, a proposed MHK project must be: (1) small; (2) installed for a short term; (3) located in non-sensitive areas based on FERC's review of the record; (4) removable and able to be shut down on short notice; (5) removed, with the site restored, before the end of the license term (unless a new license is granted); and (6) initiated by a draft application with sufficient information to support environmental analysis. For more information on MHK pilot projects, consult FERC's white paper on the pilot project licensing process available at **http://www.ferc.gov/industries/hydropower/gen-info/licensing/hydrokinetics/energy-pilot.asp**.

2.13. Will BOEM convert a limited lease to a commercial lease?

No. BOEM will not convert a limited lease to a commercial lease because OCSLA requires BOEM to determine whether there is competitive interest in any usage of an area not already governed by an existing lease. 43 U.S.C. 1337(p)(3).

2.14. If I have a license for a pilot project, can I transition to a standard license?

Yes. If you have a license for a pilot project, FERC generally will consider your application for a new license with standard terms as an application for relicense.

Chapter 3. Procedures for Obtaining a Lease and License

3.1. What are the relevant leasing and licensing regulations and where do I find them?

The BOEM regulations for MHK leases are found at 30 CFR part 585, and the FERC regulations for licenses are found at 18 CFR parts 4 and 5.

3.2. How do I obtain a lease for an MHK project on the OCS?

You may either respond to a BOEM notice regarding a specific area of interest or submit an unsolicited lease request as discussed in 30 CFR part 585 subpart B.

In the case that BOEM initiates the MHK planning and leasing process offshore a particular state, BOEM may issue a *Federal Register* notice for a specific area of interest, such as a Request for Interest (RFI) or a Call for Information and Nominations (Call) to solicit interest in obtaining one or more leases in that area. In the case that you submit an unsolicited lease request indicating interest in obtaining an MHK lease in a specific OCS area, BOEM may publish a notice in the *Federal Register* to determine whether other entities are interested in obtaining an MHK lease in the same area described in your lease request.

If you are responding to a BOEM-published *Federal Register* notice, or submitting an unsolicited lease request for a particular area, you should include in your submission: your area of interest, a description of your objectives and proposed facilities, a general schedule of activities, any environmental or resource data available, and documentation that you are qualified to hold a lease, as set forth in 30 CFR 585.213 and 230. If you are submitting an unsolicited lease request, you must also submit a statement that your proposed activity conforms with state and local energy planning requirements, initiatives, or guidance, and one copy of your Pay.gov confirmation receipt page that you will receive when you make your required acquisition fee payment, as specified in 30 CFR 585.230 and 500.

If BOEM issues a determination that there is no competitive interest for the potential lease area and enters into a lease with you, you need to submit a Site Assessment Plan (SAP) in accordance with 30 CFR 585.600, unless you request and BOEM approves a departure from this requirement pursuant to 30 CFR 585.103. Your SAP must be submitted within 12 months from the date of lease issuance in accordance with 30 CFR 585.601(a). Your SAP must describe the activities you plan to perform for the assessment of your lease and include the results of your physical characterization surveys and baseline environmental surveys to support these site assessment activities in accordance with 30 CFR 585.605 through 585.612. However, if you are proposing to conduct activities to characterize your potential lease area that do not warrant the submission of a SAP because these activities would not involve the installation of bottom-founded facilities (see the definition of "site assessment activities" at 30 CFR 585.112), you may instead submit a request for a departure from the requirement to submit a SAP pursuant to 30 CFR 585.103.

If there is competitive interest in MHK development in the potential lease area(s), BOEM will publish a Proposed Sale Notice, and later, a Final Sale Notice, following the necessary environmental review and consultations. In accordance with 30 CFR 585.216, you must submit your bid to BOEM according to the requirements in the Final Sale Notice. Upon receipt of the required payments and properly executed lease forms, BOEM will issue a lease to the successful

bidder. If you win the lease, you must submit your SAP within 12 months of lease execution. Again, if you are proposing to conduct activities to characterize your potential lease area that do not warrant the submission of a SAP because these activities would not involve the installation of bottom-founded facilities (see the definition of "site assessment activities" at 30 CFR 585.112), you may instead submit a request for a departure from the requirement to submit a SAP, pursuant to 30 CFR 585.103, within the 12-month timeframe.

Issuance of the lease and approval of a SAP convey the right to conduct the specific activities described in the lease and SAP. The right to generate power employing MHK devices for a specified length of time is not conveyed until you obtain a FERC license.

3.3. How do I obtain a license for an MHK project on the OCS?

The Commission follows three different licensing processes: the Integrated Licensing Process (ILP), the Traditional Licensing Process (TLP), and the Alternative Licensing Process (ALP). The ILP is the Commission's default licensing process. You must receive approval from the Commission to use the TLP or ALP. All three processes involve a pre-filing stage, during which studies are developed and carried out and a license application is prepared, and a post-filing stage, during which a license application is reviewed, an environmental document is prepared, and a licensing decision is made. At all stages, Commission staff seeks input from stakeholders.

All three of the Commission's licensing processes begin with the filing of a Pre-Application Document (PAD), which includes all existing, relevant, and reasonably available information about the project and its effect on resources gained through consultation with federal, state, and local resource agencies, Indian tribes, nongovernmental organizations, and members of the public (stakeholders). In the PAD, you must identify information and study needs for the proposed project, and provide a process plan or schedule of upcoming licensing activities. Many of the requirements for the FERC PAD are similar to the requirements for a BOEM SAP.

After you have conducted your studies, you will file a final license application with FERC. Your application will contain general information about the project. It also will contain specific exhibits, including a thorough description of the proposed project and its operation, and necessary drawings and maps.

3.4. What 30 CFR 585 plans and reports are required by BOEM for MHK leases that require a FERC license?

For BOEM-issued commercial leases involving MHK projects, a SAP is required for every lease, unless you request, and BOEM approves, a departure from this requirement (see section 3.2 above). However, since the FERC license takes the place of a BOEM Construction and Operations Plan (COP) for MHK projects, BOEM will not require the submission of a COP or any associated reports (e.g., the Facility Design Report and the Fabrication and Installation Report).

For BOEM-issued limited leases involving MHK related activities, neither a General Activities Plan (GAP) nor any associated reports (e.g., the Facility Design Report and the Fabrication and Installation Report) will generally be required for those projects that require a FERC license.

For BOEM-issued leases involving MHK research activities, BOEM will determine, in coordination with FERC, the most appropriate plan and report requirements for your particular project.

3.5. Can the BOEM leasing process and the FERC licensing process be aligned for a specific project?

Yes, where a lease and license are required, every effort will be made to align the two processes, thus enabling your overall process to be completed more quickly and efficiently. However, the extent to which the two processes may be streamlined will depend on whether the BOEM leasing process is competitive or noncompetitive and what type of lease you are trying to obtain.

Guidance tables have been created to provide examples as to how the commercial leasing and licensing processes may move forward. Please note that these two tables are for illustrative purposes only and are not intended to depict or anticipate every possible leasing and licensing scenario that could arise. Table 1 details how the project authorization process could move forward if BOEM determines that there is competitive interest in obtaining the lease. Table 2 details how the project authorization process could move forward if BOEM determines that there is no competitive interest in obtaining the lease.

3.6. If I am seeking a BOEM lease under the competitive lease sale process, when may I begin the FERC licensing process?

Under the competitive lease sale scenario, FERC will begin processing an application only after BOEM has issued a lease, making it clear that you are the applicant with site access (Table 1). Therefore, you should file your PAD with FERC after your BOEM lease has been issued.

3.7. If I am seeking a BOEM lease under the noncompetitive leasing process, when may I begin the FERC licensing process?

You may begin your FERC license application process by filing your PAD after BOEM publishes its determination of no competitive interest in the *Federal Register* (Table 2). A joint scoping meeting may be conducted by both BOEM and FERC. You may proceed with FERC licensing studies while BOEM conducts any necessary environmental review of your SAP submitted pursuant to a lease. Table 2 details the opportunity to align the BOEM and FERC processes in noncompetitive situations. Early in the process, we encourage you to discuss with BOEM and FERC the best approach for your proposed project.

3.8. If I am seeking a BOEM limited lease or a lease to conduct research activities, when may I begin the FERC licensing process, including a request for expedited processing for a pilot project?

In the case of a limited lease, as with a commercial lease, you may file either your PAD (pre-application for a commercial project) or your draft application with waiver request (the initial submission for licensing a pilot project) with FERC following BOEM's determination of no competitive interest, if there is no competition, or after BOEM has issued its lease, if there is competition.

BOEM will consider moving forward with the leasing process for research activities only where BOEM has determined that there is no competitive interest. Leases for research activities are

expected to be very case specific in nature. You may file your PAD or draft application with the Commission after BOEM has agreed to process your lease request to conduct research activities. In some cases, a FERC license may not be required for a limited lease or a lease to conduct research activities. (See section 3.2 above.)

3.9. Without a COP, how will I obtain a BOEM easement for the project's transmission line?

An MHK lease issued by BOEM includes the right to one or more project easements for the purpose of installing transmission cables. After FERC issues the license for the project including the primary transmission line, FERC will inform BOEM, and BOEM will incorporate into your lease, as an addendum, an easement covering the portion of the project's primary transmission line located on the OCS.

3.10. How can I enhance the agencies' ability to cooperate on National Environmental Policy Act (NEPA) documentation?

We encourage you to communicate with BOEM and FERC early in the process regarding your plans for your proposed project to further facilitate BOEM's and FERC's consideration of the best approach for review and approval. Efficiencies to consider could include: (1) developing a joint process plan with all relevant parties, including the applicant, with milestones, and (2) agreeing on contents of an information package that meets both agencies' needs without duplication.

3.11. How long does it take to obtain a BOEM lease? A FERC license?

If there is competitive interest in an area, BOEM anticipates it could take 2 to 2.5 years to complete the MHK lease sale process; this timeframe includes consultations and environmental review(s). If there is no competitive interest, BOEM anticipates it could take 1 to 2 years to issue a lease, depending on the complexity of the activities proposed.

FERC anticipates issuance of a license within one year after a complete MHK license application is filed. The amount of time it takes you to conduct studies to prepare that application under the FERC pre-filing process and how thoroughly you satisfy the application requirements will be the primary factors in determining the total length of time required to obtain a FERC license. FERC expects to issue licenses for pilot projects in as few as six months after submission of a complete application.

Chapter 4. Municipalities and Competition

4.1. I am a municipality under the Federal Power Act (FPA). How will that be factored into the lease/license decision?

If you are seeking municipal preference for a FERC license, you should notify BOEM of your status in your unsolicited lease request or in response to a BOEM *Federal Register* notice. If municipal interest is indicated, BOEM may incorporate considerations such as "public benefit" or "state and local needs" into the auction format. Potential state and municipal applicants should be aware that FERC will only accept a license application from a leaseholder.

4.2. How will FERC address competition following or during the leasing procedures?

Competition for an OCS site will occur during the BOEM leasing process. If there is competition, FERC will only accept a license application from a leaseholder.

Chapter 5. Lease and License Terms

5.1. What are site assessment and operations terms under an MHK commercial lease issued competitively? Non-competitively?

Typically, whether issued competitively or non-competitively, commercial leases have site assessment terms of five years. A commercial lease operations term is 25 years unless determined otherwise, for example, to coincide with the proposed term of an associated FERC license.

5.2. How is the lease term determined or adjusted?

Though BOEM provides a baseline determination that commercial leases will have an operations term of 25 years, longer lease terms may be negotiated (30 CFR 585.235(a)(3)) to correspond with the operations term in your FERC license or to accommodate the term for a relicense of a pilot project. Commercial leases' preliminary terms (during which a site assessment plan is submitted) and site assessment terms may be modified by an automatic extension for plan review (30 CFR 585.235(a)) or, if requested, by an extension at BOEM's discretion (30 CFR 585.235(b)). Commercial leases' duration may be modified by a suspension (30 CFR 585.415-421), and leases may be renewed (30 CFR 585.425-429). Limited leases have a term of five years. The terms of a lease to conduct research activities will be negotiated by the Director of BOEM and the head of the applicable federal agency, state governor, or their authorized representatives on a case-by-case basis (30 CFR 585.238). All types of leases may be relinquished (30 CFR 585.435) or cancelled (30 CFR 585.437).

5.3. How is a FERC license term determined?

FERC license terms are set based on a number of factors, including size of the development and mitigation measures required under a license. Under the FPA, FERC can issue an original license for a term of up to 50 years and a relicense for a term of between 30 and 50 years. On October 19, 2017, the Commission established a 40-year default license term policy for original and new licenses, effective October 26, 2017. Appropriate pilot projects may have short license terms of approximately 5 to 10 years in keeping with the early stage of the technology, expected small size of the projects, required safeguards, and the experimental nature of the efforts.

5.4. Can a leaseholder assign the lease? Can a licensee transfer the license?

Yes. Both BOEM and FERC regulations require pre-approval for a lease assignment and a license transfer, respectively. A leaseholder must apply for approval of an assignment from BOEM (30 CFR 585.408) and a licensee must apply for a transfer from FERC (18 CFR part 9). Lessees and licensees are encouraged to consult with BOEM and FERC staff before applying for a lease assignment or transfer.

Chapter 6. Financial Assurance Requirements

6.1. How will financial assurances be managed for MHK projects on the OCS?

In accordance with BOEM's regulations, financial assurance will be required for all activities under a BOEM lease and a FERC license, regardless of lease or license type. BOEM and FERC will coordinate this requirement on a case-specific basis.

6.2. What financial assurances do I need to provide?

Generally, in accordance with the applicable BOEM regulations, you will be required to provide a series of financial assurances over the life of your commercial lease and license. You will need to provide various amounts of financial assurance, depending on the types of activities you propose to conduct on your lease and under your license, and the type and number of facilities you propose to construct and install. BOEM's financial assurance requirements can be found at 30 CFR 585.511-537.

Under BOEM's regulations at 30 CFR 585.515, prior to issuance of your commercial lease, you will need to provide an acceptable form of security in the amount of $100,000 minimum. You may also be required to provide a supplemental bond or other acceptable form of financial assurance upon SAP submission, depending on the activities that you will conduct during your site assessment phase in accordance with 30 CFR 585.516(a)(2). Finally, once facilities are installed or being installed under your lease and license, you will be required to provide a decommissioning bond or other acceptable form of financial assurance in accordance with 30 CFR 585.516(a)(4). A supplemental financial assurance may be required in an amount determined by BOEM before FERC issues a license in accordance with 30 CFR 585.516(c).

In the case of a limited lease, you will be required to provide a minimum $300,000 bond or other acceptable form of financial assurance before BOEM will issue your limited lease in accordance with 30 CFR 585.520(a). BOEM may require that you increase the level of your financial assurance as activities progress on your lease in accordance with 30 CFR 585.521.

The amount of financial assurance required for a lease to conduct research activities will be determined on a case-by-case basis in accordance with 30 CFR 585.238.

Chapter 7. Fee Structures

7.1. What types of fees or annual charges will I have to pay?

While both BOEM and FERC are required to assess fees or annual charges, the agencies will coordinate to ensure that the overall fees for OCS MHK projects are fair and appropriate.

BOEM is required to establish fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease issued on the OCS for MHK projects (see 43 U.S.C. 1337(p)(2)). BOEM has published regulations addressing fees at 30 CFR part 585, subparts B and E.

FERC licensees are required to pay reasonable annual charges for the costs of administration of part I of the FPA, and for use of tribal lands, government lands, and government structures (see 16 U.S.C. 803(e)). FERC has published regulations at 18 CFR part 11.

7.2. How will BOEM payments be determined?

In accordance with 30 CFR 585.500, for commercial or limited leases, you will be required to make initial, one-time payments to obtain a lease followed by on-going, annual payments when the term of the lease commences. For leases to conduct research activities, BOEM will not require you to make any payments.

The initial payments will vary depending on whether you are submitting a request to obtain a lease through the noncompetitive leasing process or responding to a competitive auction process. In accordance with 30 CFR 585.500(c)(2), if you are seeking a lease through the noncompetitive leasing process, you must submit an acquisition fee, typically $0.25 per acre unless otherwise set by BOEM, at the same time you submit the request for a lease through the noncompetitive leasing process. This acquisition fee will be applied to any bonus bid deposit you subsequently submit should BOEM decide that the lease must be offered competitively.

If you are interested in bidding on a lease through the competitive process, BOEM will require that you include a bid deposit at the same time you submit your bid package in accordance with 30 CFR 585.500(c)(1). If you win an auction, the balance of the bonus bid amount you offered will be payable to BOEM prior to issuing you a lease.

In accordance with 30 CFR 585.500, the ongoing payments will consist of annual rent and operating fees set by BOEM based on the terms associated with your lease issued noncompetitively or as an outcome of a competitive auction process. You will pay the annual rental rate beginning with lease issuance. In the case of a commercial lease, these rent payments will continue until project operations commence, at which time you will begin paying the annual operating fee. Annual rental payments for your transmission line easement will become due once the FERC license is issued. In the case of a limited lease, rent payments will continue for the life of the lease, and an operating fee will not be assessed.

When setting the rent and operating fee terms, BOEM will consider FERC's administrative charges and information (1) submitted with an unsolicited lease request, or (2) received in response to RFI and Call, and other notices published as part of the competitive leasing process. See 30 CFR 585.210 through 585.232 for specific steps and information requirements in the competitive leasing process.

Leaseholders may request that BOEM reduce or waive operating fee payments to encourage continued or additional activity, though no more than six years of your operations term will be subject to full waiver of the operating fee (30 CFR 585.510).

7.3. How will FERC annual charges be determined?

The lessee/licensee will be required to pay the following annual charges, as appropriate, pursuant to the FPA:

- *Administrative Charges* – For all projects over 1.5 megawatts, including those on the OCS, FERC will assess administrative annual charges by dividing its calculated fiscal year program costs among all the licensees according to the licensees' installed capacity. FERC collects FPA part I costs of other federal agencies based on an allocated share of the other agencies' documented fiscal year program costs.
- *Land Charges* – FERC will establish a method for assessing charges for offshore land as it has done for onshore government lands.
  For projects occupying federal land, FERC will assess a government lands charge using a fee schedule, published annually in the *Federal Register*, that lists adjusted per-acre land values by county based on data from the National Agricultural Statistics Service Census (18 CFR 11.2). For projects that occupy tribal land, charges will be set on a case-by-case basis.
- *Government Dam Charges* – For projects using a government structure, charges will be set at a graduated rate set forth at 18 CFR 11.3.

Chapter 8. Hybrid Project Considerations

8.1. What is a hybrid project?

A hybrid project, for the purpose of these guidelines, is a project that includes technologies that generate electricity from more than one form of renewable energy, one of which is an MHK technology (e.g., wind- and wave-generation) under the same lease.

8.2. Will BOEM allow more than one type of activity on a lease?

A lease for renewable energy activities may be held for one type of activity (e.g., wind) or for various activities (e.g., wind, wave, ocean current, etc.). BOEM will determine the scope of renewable energy activities that may be allowed on a lease and issue a public notice to determine competitive interest. This notice will clearly state the scope of the lease under consideration.

If BOEM determines that there is no competitive interest, BOEM will follow the noncompetitive leasing process. If BOEM determines that there is competitive interest, BOEM will clearly state the scope of the lease offering early in the process and in the subsequent Proposed and Final Sale Notices. If BOEM decides to limit competition to one type of activity (e.g., ocean current), BOEM will not consider bids for any other type of activity, and the lease will be limited to that activity. If BOEM decides to open competition to more than one type of activity or to the full set of hybrid activities, it will consider bids for the individual activities or set of activities identified, and the lease may authorize one or more of those activities. If you submit an unsolicited lease request, you must define your intended activities because the lease is specific to the type of project.

8.3. How do I obtain approval for a hybrid project (e.g., wind-MHK)?

As in a single MHK lease situation, you would need to acquire a lease from BOEM that covers both technologies. BOEM will issue a public notice to determine whether competitive interest exists in the potential lease area and may proceed with either the competitive or noncompetitive lease issuance process.

You must submit a COP to BOEM for the construction and operation of the non-MHK component of your project in accordance with 30 CFR 585.620 through 585.629. You must apply for a FERC license for the MHK component of your project. BOEM will not require that a COP be submitted for the MHK component of your project (see section 3.4)

8.4. Can I modify my project to create a hybrid by incorporating another renewable energy technology?

Consistent with 30 CFR part 585, if, during your lease term, you or another applicant wish to engage in activities at or near your project that are not covered by the existing lease, you or the other applicant will be required to request a separate lease. BOEM will evaluate whether or not that separate lease conflicts with existing uses prior to making a decision about whether to offer the area for additional lease(s). If joint use of an area is acceptable to both BOEM and FERC, BOEM will initiate the leasing process to issue the land right for the additional activity. A FERC license is required for any non-federal MHK project on the OCS, except as described in Section 2.5 above.

Chapter 9. Straddle Project Considerations

9.1. What are straddle projects?

Straddle projects are MHK projects that straddle the boundary dividing state submerged lands and the OCS.

9.2. Do I need a federal lease and a FERC license for a straddle project?

Yes. You must obtain a lease from BOEM for the OCS portion of your straddle project in accordance with 30 CFR 585.104. A FERC license is required for both the OCS and state submerged lands portion of a straddle project, except as described in Section 2.5 above.

Early process planning will be essential for the successful execution of straddle projects. FERC would prefer to license the entire project as a whole, which is feasible if the applicant consults with FERC, BOEM, and relevant states and stakeholders early in the planning process.

9.3. If I have a licensed project or hold a FERC preliminary permit in state waters next to the OCS, do I have any priority to develop the neighboring site within the OCS?

No. If you hold a license or preliminary permit for state submerged lands and would like to obtain a lease and license to develop an MHK project on a neighboring portion of the OCS, your potential OCS project would be subject to the competition requirements of OCSLA, and you would not have any automatic priority in obtaining an OCS lease for your MHK activities.

Chapter 10. Contact Information

10.1. Who should I contact at BOEM if I have questions?

If you have additional questions or are planning to apply for a lease and license for a project on the OCS, please contact BOEM:

James Bennett
Program Manager
Bureau of Ocean Energy Management
Office of Renewable Energy Programs

Mail Stop VAM-OREP
45600 Woodland Road
Sterling, VA 20166

Phone: 703-787-1300
Email: James.Bennett@boem.gov

10.2. Who should I contact at FERC if I have questions?

For questions regarding FERC licensing on the OCS, please contact FERC's Division of Hydropower Licensing:

Stephen Bowler
Program Manager
Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Licensing
888 First St., NE
Washington, DC 20426

Phone: 202-502-6861
Email: Stephen.Bowler@ferc.gov

Agency Guidance Statement

BOEM and FERC issue guidance documents to clarify and provide information about legal requirements, related policies, and technical issues, such as recommended data and formats for various submittals. This guidance document sets forth policy on and interpretation of statutory, regulatory, lease, contractual, or plan approval provisions or technical issues to provide additional information regarding BOEM's and FERC's approach to managing MHK renewable energy projects. Except to the extent that provisions of this guidance document derive from requirements established by statute, regulation, lease, contract, or other binding legal authority, they do not have the force and effect of law and are not meant to bind the public in any way. If you wish to use an alternate approach that you believe is consistent with the governing statute and regulation, we recommend you contact BOEM or FERC as appropriate in advance.

While this guidance document includes recommendations and guidance, the recommendation and guidance provisions may be made mandatory through a lease stipulation or condition of approval from BOEM. If you are issued a plan, permit, or other authorization from BOEM with a condition of approval or a lease with a stipulation requiring compliance with this guidance document or identified portions thereof, you must implement those portions or all aspects of this guidance document, if particular aspects are not singled out in the stipulation or condition of

approval. Under such circumstances, you must implement and comply with this guidance document (or identified portions thereof) regardless of whether the terms within the guidance document would otherwise be a recommendation or request (e.g., use of the term “should” in the guidance document will be considered “must” if required by the lease stipulation or condition of approval).

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BOEM / FERC Example Process Tables on Regulation of Marine Hydrokinetic Energy Projects on the OCS
For Illustrative Purposes Only

Table 1: Process for Commercial Leasing and Licensing if Competitive Interest Exists
(insert date guidance doc approved)

	Action	**Responsible Entity**	**Reference**	**Time**
1.	Issue *Federal Register* notice to determine competitive interest	BOEM	30 CFR §585.210 30 CFR §585.211	
2.	Submit response to *Federal Register* notice to BOEM	Applicants	30 CFR §585.213	Within the notice's comment period.
3.	Announce determination of competitive interest	BOEM	30 CFR §585.211	
4.	Perform Area Identification	BOEM	30 CFR §585.211	
5.	Publish Proposed Sale Notice, including site-specific lease stipulations resulting from environmental compliance documentation	BOEM	30 CFR §585.211 30 CFR §585.216	
6.	Publish Final Sale Notice	BOEM	30 CFR §585.211 30 CFR §585.216	
7.	Evaluate bids, execute lease	BOEM & Applicant	30 CFR §585.222 30 CFR §585.224	Applicant executes lease within 10 days of receiving the lease copies.

8.	Submit Site Assessment Plan (SAP), or departure request, to BOEM Submit pre-application document (PAD) to FERC	Applicant	30 CFR §585.601 30 CFR §§585.610-612 30 CFR §585.103 18 CFR §5.5, §5.6	Within 12 months of lease execution, initializing FERC licensing in lieu of BOEM COP.
9.	Conduct scoping, establish process plan	FERC (BOEM cooperation)	18 CFR §5.8	Scoping document issued 60 days after submittal of PAD. Scoping meeting 30 days after document. Comments due 60 days after document.
10.	Submit proposed study plan to FERC	Applicant	18 CFR §5.11	45 days after scoping comments due. Informal study negotiations may lead to revised study plan. Study Plan meeting within 30 days of submittal. 90 days for comments. 30 days to revise.
11.	Issue study plan determination	FERC	18 CFR §5.13(c)	Determination 30 days after revised study plan.
12.	Conduct studies	Applicant	18 CFR §5.15	Study report at end of 12 month study period. Further study if needed.
13.	File preliminary licensing proposal	Applicant	18 CFR §5.16	150 days before filing of license application.
14.	File license application with FERC	Applicant	18 CFR §5.17	

15.	Issue notice of Ready for Environmental Analysis (REA) and request for comments and conditions	FERC	18 CFR §5.22	60 days after application filed. Comments and conditions due 60 days from REA.
16.	Issue environmental document for comment	FERC (BOEM cooperation)	18 CFR §5.24	120 days after comments due.
17.	Issue license	FERC		
18.	Synchronize the length of the BOEM lease term with the term of the FERC license	BOEM & FERC		

Table 2: Process for Commercial Leasing and Licensing if No Competitive Interest Exists
(Insert date guidance doc approved)

	Action	Responsible Entity	Reference	Time
1.	Issue *Federal Register* notice to determine competitive interest	BOEM	30 CFR §585.231 30 CFR §585.232	
2.	Submit response to *Federal Register* notice to BOEM	Applicant	30 CFR §585.213 30 CFR §585.232	Within the notice's comment period.
3.	Announce determination of no competitive interest	BOEM	30 CFR §585.231	
4.	Submit Site Assessment Plan (SAP), or departure request, to BOEM Submit pre-application document (PAD) to FERC	Applicant	30 CFR §585.601 30 CFR §§585.610-612 30 CFR §585.103 18 CFR §5.5, §5.6	Within 12 months of lease execution, initializing FERC licensing in lieu of BOEM COP.
5.	Conduct joint scoping, establish process plan	BOEM & FERC	30 CFR §585.231 18 CFR §5.8	Scoping document issued 60 days after submittal of PAD. Scoping meeting 30 days after document. Comments due 60 days after document.

6.	Submit proposed study plan to FERC	Applicant	18 CFR §5.11	45 days after scoping comments due. Study plan meeting within 30 days of submittal. 90 days for comments. 30 days to revise.
7.	Issue BOEM information request / FERC study plan determination	BOEM & FERC	18 CFR §5.13(c)	Determination 30 days after revised study plan.
8.	Conduct studies	Applicant	18 CFR §5.15	Study report at end of 12 month study period. Further study if needed.
9.	File preliminary licensing proposal	Applicant	18 CFR §5.16	150 days before filing of license application.
10.	File license application with FERC	Applicant	18 CFR §5.17	
11.	Issue notice of Ready for Environmental Analysis (REA) and request for comments and conditions	FERC	18 CFR §5.22	60 days after application filed. Comments and conditions due 60 days from REA.
12.	Issue environmental document for comment	FERC (BOEM cooperation)	18 CFR §5.24	120 days after comments due.
13.	Finalize lease terms and stipulations (after negotiation with applicant)	BOEM	30 CFR §585.231	
14.	Execute and announce lease	BOEM & Applicant	30 CFR §585.231	
15.	Issue license	FERC		

Attachment A - Memorandum of Understanding Between the Department of the Interior and the Federal Energy Regulatory Commission, April 9, 2009

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
THE U.S. DEPARTMENT OF THE INTERIOR
AND
FEDERAL ENERGY REGULATORY COMMISSION

I. PURPOSE

The U.S. Department of the Interior (DOI) and the Federal Energy Regulatory Commission (Commission) (jointly, Participating Agencies) enter into this Memorandum of Understanding (MOU) to clarify jurisdictional understandings regarding renewable energy projects in offshore waters on the Outer Continental Shelf (OCS), in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic (i.e., wave, tidal, and ocean current) energy projects.

II. COMMITMENTS OF THE PARTICIPATING AGENCIES

The Participating Agencies agree as follows:

A. The Participating Agencies recognize that: (1) the DOI's Minerals Management Service (MMS) has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic renewable energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

B. MMS will issue leases, easements, and rights-of-way for hydrokinetic projects to be located on the OCS pursuant to Section 8(p) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337(p) (2006), and will conduct any necessary environmental reviews, including those under the National Environmental Policy Act (NEPA), related to those actions. The Commission may, at its discretion, choose to become a cooperating agency with respect to the MMS's preparation of an environmental document for any OCS hydrokinetic project.

C. The Commission will not issue preliminary permits for hydrokinetic projects located on the OCS.

D. The Commission will issue licenses under Part I of the Federal Power Act (FPA), 16 U.S.C. §§ 792-823a (2006), and exemptions from licensing under Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2006), for the construction and operation of hydrokinetic projects on the OCS, and will conduct any necessary analyses, including those under NEPA, related to those actions. The Commission's licensing process includes the active involvement of relevant federal land and resource agencies, including the DOI. MMS may, at its discretion, choose to become a cooperating agency with respect to the Commission's preparation of an environmental document for any OCS hydrokinetic project. If MMS becomes a

cooperating agency, it will not conduct "off-the-record" communications relevant to the merits of the Commission's licensing or exemption proceeding, including such communications with staff of other non-cooperating DOI agencies regarding preparation of the preferred alternative or about preparation of any recommendations, terms or conditions, or prescriptions filed under Sections 4(e), 10, and 18 of the FPA (16 U.S.C. §§ 797(e), 803, and 811 (2006)). MMS's participation as a cooperating agency in a Commission-led NEPA review for an OCS hydrokinetic project shall not preclude DOI from intervening, on the behalf of other DOI agencies including, but not limited to, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Indian Affairs, in the licensing or exemption proceeding for that project.

E. The Participating Agencies will coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. Further, the Participating Agencies will coordinate to ensure that any licenses or exemptions issued by the Commission, and all operations regulated by the Commission, with respect to a lease, easement, or right-of-way shall be consistent with the provisions of Section 8(p) of the OCSLA and other relevant provisions of that Act, the FPA, and other applicable law.

F. MMS may attach terms and conditions to leases, easements, and rights-of-way issued for hydrokinetic projects located on the OCS. The Commission will include in any license or exemption issued for such projects a requirement to comply with all terms and conditions of any OCS lease, easement, and right-of-way.

G. The Commission will not issue a license or exemption to an applicant for an OCS hydrokinetic project until the applicant has first obtained a lease, easement, or right-of-way from MMS for the site thereof.

H. MMS will provide in all leases, easements, and rights-of-way for OCS hydrokinetic projects that construction and operation of the hydrokinetic project cannot commence without a license or exemption from the Commission, except in circumstances where the Commission has notified MMS that a license or exemption is not required.

I. The Commission may inspect OCS hydrokinetic projects it authorizes to ensure compliance with the terms of its licenses or exemptions. MMS may inspect OCS hydrokinetic projects to ensure compliance with the provisions of any lease, easement, and right-of-way it issues. The Participating Agencies will coordinate inspections through the development of joint policies or regulations, as appropriate.

J. Each Participating Agency shall use its own appropriations to carry out its responsibilities under this MOU.

III. ISSUANCE OF POLICIES AND REGULATIONS

The Participating Agencies agree to work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects to carry out the purposes of this MOU. This will include, among others, processes to address hybrid (wind/hydrokinetic) projects and projects that straddle the boundaries between state waters and the OCS.

IV. MISCELLANEOUS

This MOU is strictly for internal management purposes, does not expand or alter the scope of the Participating Agencies' respective authorities, and shall not be construed to create any legal obligation on the part of either agency or any private right or cause of action for or by any person or entity.

V. PRINCIPAL CONTACTS

Each party hereby designates the following as the initial principal contacts for the agency. These contacts may be changed at the Participating Agency's discretion upon written notice to the other Participating Agency.

DOI: MMS Deputy Director

Commission: Director of the Office of Energy Projects

VI. TERM OF THE AGREEMENT

This MOU shall take effect on the date of the last approving signature specified in Section VII, below. The MOU may be modified only upon the written agreement of the Participating Agencies. The MOU may be terminated 120 days after a Participating Agency provides written notice to the other Participating Agency.

VII. SIGNATORIES

U.S. Department of the Interior by:

Ken Salazar

Date: APR 0 9 2009

Ken Salazar
Secretary

Federal Energy Regulatory Commission by:

Date: 04/06/09

Jon Wellinghoff
Chairman