MARINE PLANNING COMMITTEE REPORT ON MARINE PLANNING

The Marine Planning Committee (MPC) discussed the Bureau of Ocean Energy Management's (BOEM) proposed Renewable Energy Modernization Rule ("REMR") at its February 23 meeting, as anticipated and noted in MPC Report 1 of this agenda item. Members of the MPC also participated in an U.S. Small Business Administration Office of Advocacy Small Entity Energy Roundtable, held February 28 specifically to consider the REMR, and the Pacific Ocean Energy Trust Northwest Offshore Wind Conference, held February 28-March 1 and where BOEM also presented information on the proposed rule.

BOEM's comment period closes on March 31. Given the length and complexity of the proposed changes, the MPC was not able to complete a draft letter in time for the Council's consideration during its March meeting. However, we offer suggested comments in this report.

Proposed Renewable Energy Modernization Rule
The Purpose and Need of the proposed rule are to *Facilitate development of OCS [outer continental shelf] renewable energy and promote U.S. climate and renewable energy objectives in safe and environmentally sound manner while providing fair return to the U.S. taxpayer*; and to *Ensure a durable and appropriate process is in place to advance renewable energy on OCS.*

The goals are to reduce administrative burdens for both developers and the Department's (Department of the Interior) staff, reduce developer costs and uncertainty, and introduce greater regulatory flexibility in a rapidly changing industry to foster the supply of OCS renewable energy to meet increasing demand, while maintaining environmental safeguards.

The proposed rule identifies eight major components. While some of those components and much of the details are beyond the Council's interest and expertise, the MPC recommends that the Council submit a comment letter on the topics summarized below.

Renewable Energy Leasing Schedule
The REMR proposes a five-year leasing schedule identifying upcoming OSW energy leases. This would include a list of locations under consideration for leasing and a schedule that BOEM would follow in holding its future renewable energy lease sales. At least once every two years, the Secretary would publish this schedule of lease sales. The first published schedule would be issued for the five-year period following the effective date of the rulemaking and subsequent schedules would cover the five-year period after the update. This passage from the REMR articulates the intent of the schedule:

> Through a proposed schedule, BOEM would provide increased certainty and enhanced transparency, and facilitate planning by industry, the States, and other stakeholders. With this change, DOI can lay out an ambitious roadmap to confront climate change, create good-paying jobs, and accelerate the nation's transition to a cleaner energy future.

The MPC supports this proposal. At the same time, the MPC continues to believe that enhanced transparency and planning require BOEM to take a programmatic approach to identifying, understanding, and analyzing potential impacts on the human, marine and coastal environments of the planned activities, including cumulative effects. The five-year schedule would facilitate a programmatic approach to activities leading to lease sales in pursuit of federal and state offshore wind goals.

Financial Assurances - Decommissioning

BOEM currently requires full funding of decommissioning accounts, intended to cover the anticipated costs of decommissioning before a facility is installed on the OCS. The proposed rule would implement an incremental funding of decommissioning accounts during the operations period of a lease or grant to satisfy financial assurance requirements for decommissioning.

The MPC is concerned this may result in situations where the account may be unable to cover decommissioning costs before the end of the lease term. For example, in January of this year a significant storm impacted the U.S. west coast. It is not unrealistic to assume some floating turbines may have incurred significant damage had they been deployed at the time. Another example, and one less likely, would be if a project becomes unfeasible or if the developer has to declare bankruptcy before the end of the lease term. The staggered approach proposed by BOEM may result in the burden for decommissioning shifting to taxpayers. It may also set up scenarios where offshore wind turbines and substations in need of decommissioning remain in the water for longer periods of time. This could give rise to safety concerns for mariners.

Site Assessment Plans for certain meteorological buoys

Renewable energy lessees typically deploy at least one meteorological (met) buoy or tower, to conduct site assessment activities before submitting a Construction and Operations Plan (COP). Deployment of such facilities are currently required to be described in a Site Assessment Plan (SAP) approved by BOEM. The offshore wind industry has transitioned to met buoys, which are less costly and less environmentally impactful than fixed bottom structures. Met buoys are attached to the seabed with a chain and mooring anchor, and deployed for no more than five years, collecting a variety of data, including wind speed, water temperature, wave height, water currents, etc.

The U.S. Army Corps of Engineers (USACE) has a nationwide permitting process (NWP 5) tailored to buoys and subject to the same Federal environmental laws as BOEM's SAP process, and the REMR proposes that met buoys be permitted through USACE's nationwide permitting process. The MPC supports this proposal but suggests a stronger requirement to remove the seafloor anchor when a met buoy is decommissioned, to prevent new potential entanglement hazards on the seafloor and to restore habitat features. NWP 5 requires that such devices be removed "*to the maximum extent practicable and the site restored to pre- construction elevations*." The MPC supports greater assurance that such anchors will be removed if at all possible, and the site restored to pre-project condition.

Multiple factor auctions and bidding credits

The REMR provides definitions for "bidding credits" and "multiple factor auction." We suggest the definition of bidding credit be modified to include a financial commitment attached to those bid credits. For example, if a bidder will get a five percent bid credit for a Lease Area Use

Community Benefit Agreement, they should be required to actually expend a significant portion of the bid credit in funding those Agreements.

The ability to use multiple factor auctions will be preserved. The REMR identifies general examples on what may qualify as a bidding credit. While community benefit agreements, like those incorporated into the lease sales off California, are implicitly included in two of the general examples, the MPC suggests specifically mentioning Lease Area Use and General Community Benefit Agreements.

On February 24, BOEM published a Proposed Sale Notice (PSN) for three leases in the Gulf of Mexico. In the PSN, BOEM included a Fisheries Mitigation and Related Benefits Bidding Credit worth 10 percent. This is intended "to compensate for potential negative impacts to commercial and for-hire recreational fisheries" and must cover gear loss or damage and lost fishing income in Lease Areas. We offer no opinion on the propriety of this bid credit; but mention it as an example of the type of credit included in the most recent PSN.

PFMC
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