

From: Michael Weiss - NOAA Federal
To: [Bowman, Randal](#)
Subject: Fwd: BOEM email request re: oil and gas legislation/regulations in sanctuaries
Date: Thursday, June 01, 2017 10:03:02 PM
Attachments: [NOAA sanctuaries and FAQ.pdf](#)

Hi Randy.

This came in to our sanctuaries folks. Seems related to the EOs.

Lets discuss at our check in tomorrow.

Thanks,

Michael

----- Forwarded message -----

From: **Mirani, Aditi** <aditi.mirani@boem.gov>
Date: Wed, May 24, 2017 at 6:49 AM
Subject: Information on sanctuaries and oil and gas drilling
To: sanctuaries@noaa.gov

Hello,

My name is Aditi Mirani and I work for the Bureau of Ocean Energy Management (BOEM) an agency within DOI.

I am trying to get information on the NOAA marine sanctuaries and oil/gas drilling. I found a document (see attached document) with the following information and have some follow up questions. Is there a more updated document/information regarding the sanctuaries with respect to oil and gas drilling?

#1. Federal Legislation (Page 5) - Congress prohibited oil and gas activities in Cordell Bank, Olympic Coast, Monterey Bay, and Florida Keys national marine sanctuaries.

Question -- Is this accurate or are there any more sanctuaries for which the legislation is applicable for?

#3. Sanctuary Regulations (Page 5): NOAA's regulations for sanctuaries generally prohibit exploring for, producing or developing hydrocarbons in sanctuaries. The only exceptions include:

- Oil and gas activities are allowed in Flower Garden Banks National Marine Sanctuary outside of designated No Activity Zones;
- Laying pipelines associated with oil and gas activities outside sanctuaries is allowed in the Gulf of Farallones and Channel Islands national marine sanctuaries; and
- Although there is technically no prohibition on oil and gas activities in Thunder Bay and Hawaiian Islands Humpback Whale national marine sanctuaries, these areas are not known to contain extractable oil and gas resources.

Are there any updates/changes to these exceptions?

Thank you in advance and I look forward to hearing from you!

Regards,
Aditi Mirani

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Frequently Asked Questions about Alternative Energy & Oil and Gas in National Marine Sanctuaries

NOAA Office of National Marine Sanctuaries

June 2009

Frequently Asked Questions on Alternative Energy and National Marine Sanctuaries

What is the ONMS position on alternative energy development?

The ONMS is charged by the National Marine Sanctuaries Act with conservation of marine resources within the national marine sanctuary system. The ONMS supports the federal goals of energy independence and development of resources from renewable and “green” sources, including wind, solar, tidal, and hydrokinetic to the extent they are consistent with the policies and objectives of the NMSA.

Are alternative energy projects allowed in national marine sanctuaries?

Generally, no. While alternative energy projects are not expressly prohibited within sanctuaries, most alternative energy proposals would involve one or more activities that are prohibited by sanctuary regulations, such as disturbance to the seabed or discharges. Further, most sanctuaries do not have the regulatory ability to issue permits for commercial alternative energy projects.

Renewable energy technologies vary greatly, are constantly evolving, and have a range of potential environmental impacts. Therefore, in those situations where regulations might allow consideration of an alternative energy project within a sanctuary, ONMS concerns about a particular proposal would depend on the potential impacts of a proposal and its proposed location. In all cases, the burden of demonstrating that the activity is compatible with the policies and objectives of the NMSA and the primary objective or resource protection would be on the project proponent. In addition, the ONMS would consider whether the sanctuary location offers the unique location and characteristics necessary for the project.

How about alternative energy research projects?

Small-scale, temporary, non-commercial research projects using alternative energy technologies may be compatible with the goals and objectives of certain sanctuaries, depending on the type of activity proposed, where it is proposed, and the regulations of the particular sanctuary. ONMS considers requests for research permits for such projects on a case-by-case basis through its general permit application process. Approval of such a research project, if granted, does not indicate that future commercial or industrial application of the technology would be appropriate or allowed within a sanctuary. For more information about the ONMS permit application process see <http://sanctuaries.noaa.gov/management/permits/welcome.html>.

Can the Minerals Management Service (MMS) issue leases for alternative energy projects in sanctuaries?

No. The Energy Policy Act of 2005 specifically excludes national marine sanctuaries from the Minerals Management Service’s Alternative Energy and Alternate Reuse Program on the Outer

Continental Shelf. Therefore, MMS cannot issue a lease, easement, or right-of-way under that authority for any alternative energy project within a national marine sanctuary.

NOTE: Under an April 9, 2009 Memorandum of Understanding between the Department of the Interior and the Federal Energy Regulatory Commission, Minerals Management Service has exclusive jurisdiction over the production, transportation or transmission of energy from offshore wind and solar projects. MMS and FERC will share responsibilities for hydrokinetic projects, such as wave, tidal and ocean current. MMS will issue leases, easements and rights of way for offshore areas for hydrokinetic projects and conduct any necessary environmental reviews. FERC will then issue licenses and exemptions from licensing for the construction and operation of offshore hydrokinetic projects and will conduct any necessary environmental analyses for those actions. An applicant must first receive a lease from MMS for a site before FERC could issue a license for a project there. FERC will not issue preliminary permits for offshore projects, the agencies said.

What about alternative energy projects just outside of sanctuaries that have potential to impact sanctuary resources?

The Energy Policy Act of 2005 does not limit the ability of MMS to issue leases, easements, or rights-of-way outside of designated national marine sanctuaries. However, section 304(d) of the National Marine Sanctuaries Act (16 U.S.C. 1434(d)) may require MMS to consult with ONMS for any proposed lease, easement, or right-of-way outside a sanctuary that is likely to destroy or injure sanctuary resources. For more information about interagency consultations see <http://sanctuaries.noaa.gov/management/consultations/welcome.html>.

Can the Federal Energy Regulatory Commission issue permits and licenses for alternative energy projects within national marine sanctuaries?

The Federal Energy Regulatory Commission is the lead agency for licensing and permitting alternative energy projects in state waters and may issue preliminary permits and licenses for such projects, including those proposed to be located within national marine sanctuaries. However, a separate ONMS permit or authorization would still need to be obtained by the proponent before any such project could proceed within a sanctuary. In cases where the project does not qualify for an ONMS permit or other authorization (or the decision is made by the ONMS to deny an application), the project could not move forward, regardless of whatever other permit, licenses, or authorization the proponent might hold.

The ONMS routinely participates in FERC proceedings, often jointly with NOAA's National Marine Fisheries Service, on any application to FERC for an alternative energy project proposed within a national marine sanctuary. ONMS's participation is to ensure sanctuary resources are adequately protected in FERC's license. In addition, FERC may be required to consult with ONMS on these projects as required by section 304(d) of the National Marine Sanctuaries Act.

NOTE: Under an April 9, 2009 Memorandum of Understanding between the Department of the Interior and the Federal Energy Regulatory Commission, Minerals Management Service has exclusive jurisdiction over the production, transportation or transmission of energy from offshore

wind and solar projects. MMS and FERC will share responsibilities for hydrokinetic projects, such as wave, tidal and ocean current. MMS will issue leases, easements and rights of way for offshore areas for hydrokinetic projects and conduct any necessary environmental reviews. FERC will then issue licenses and exemptions from licensing for the construction and operation of offshore hydrokinetic projects and will conduct any necessary environmental analyses for those actions. An applicant must first receive a lease from MMS for a site before FERC could issue a license for a project there. FERC will not issue preliminary permits for offshore projects, the agencies said.

Frequently Asked Questions on Oil and Gas Exploration and Drilling in National Marine Sanctuaries

Is oil and gas drilling allowed in national marine sanctuaries?

Generally no, but there are a few limited exceptions. Oil and gas activities in sanctuaries are legally restricted at a number of levels including through sanctuary regulations, federal legislation, and presidential directive. Each is described below:

1. Federal Legislation: Congress prohibited oil and gas activities in Cordell Bank, Olympic Coast, Monterey Bay, and Florida Keys national marine sanctuaries.
2. Presidential Directive: There is also a Presidential directive to the Secretary of the Interior, which prohibits the issuing of new leases for oil and gas drilling activities in sanctuaries. This “moratorium” as it is commonly called, does not affect leases that were in effect as of July 14, 2008 and only applies to existing sanctuaries.
3. Sanctuary Regulations: NOAA’s regulations for sanctuaries generally prohibit exploring for, producing, or developing hydrocarbons in sanctuaries. The only exceptions to this include:
 - Oil and gas activities are allowed in Flower Garden Banks National Marine Sanctuary outside of designated No Activity Zones;
 - Laying pipelines associated with oil and gas activities outside sanctuaries is allowed in the Gulf of Farallones and Channel Islands national marine sanctuaries; and
 - Although there is technically no prohibition on oil and gas activities in Thunder Bay and Hawaiian Islands Humpback Whale national marine sanctuaries, these areas are not known to contain extractable oil and gas resources.

What effect did the 2008 lifting of the Presidential offshore drilling moratorium have on oil and gas drilling in sanctuaries?

In a 1990 presidential directive to the Department of the Interior, President George H.W. Bush placed a moratorium on the issuance of new leases for offshore oil and gas drilling throughout the United States. In 1998, President Clinton extended the order through 2012. Though President G.W. Bush rescinded the directive on July 14, 2008, he did not rescind the moratorium as it applied to national marine sanctuaries.

What effect did the 2008 lifting of the Congressional moratorium on the conduct of offshore drilling on the outer continental shelf have on such activities within sanctuaries?

The Congressional moratorium on the conduct of offshore drilling on the outer continental shelf had been included in appropriations language prohibiting the expenditure of appropriated funds for certain oil and gas leasing activities. This moratorium was not included in the appropriations legislation for fiscal year 2009 and thus expired at the end of fiscal year 2008 (October 2008). However, this action did not affect the legislative and presidential prohibitions on such activities within national marine sanctuaries as described above.

What would have to happen for oil and gas drilling to be allowed within sanctuaries?

Several actions would have to occur before oil and gas drilling could be allowed within sanctuaries, including:

1. The president would have to rescind the presidential moratorium on leasing within national marine sanctuaries;
2. Congress would need to pass legislation, and the President would have to sign or his veto be overridden, to rescind the existing statutory prohibitions on oil and gas activities in Cordell Bank, Monterey Bay, Olympic Coast, and Florida Keys national marine sanctuaries; and
3. NOAA would have to amend its regulations to allow oil and gas activities within the sanctuaries where they are currently prohibited, a process that would include full public notice and comment.