



# Jurisdictional issues surrounding competing marine resource uses:

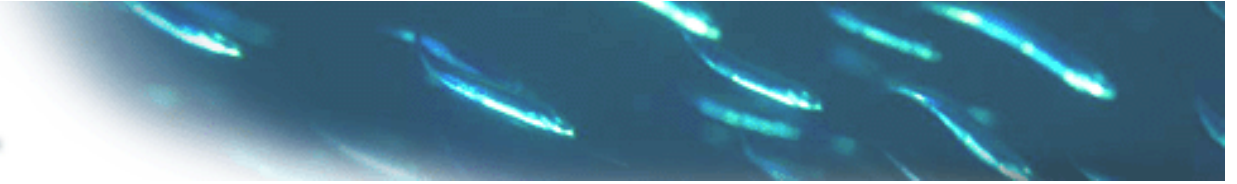
***Offshore LNG, aquaculture and wind power***

***with a bonus review of:***

- Energy Policy Act of 2005***
- Marine Aquaculture Act of 2005***

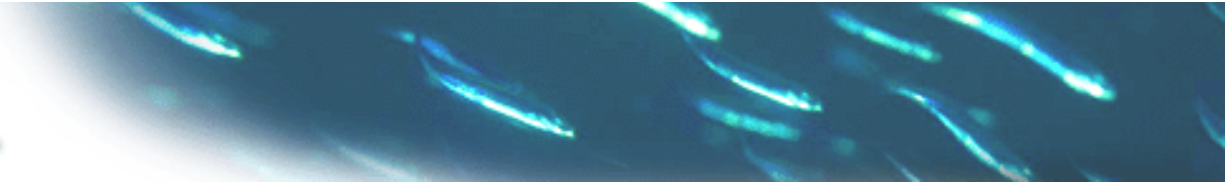
January 27, 2006  
SSC/SSAC Joint Meeting

Chad Demarest  
Ecosystems Project Leader



## Presentation Overview

- **Purpose, scope**
- **Offshore LNG terminals**
- **Offshore aquaculture**
- **Offshore wind power generation**
- **General conclusions**

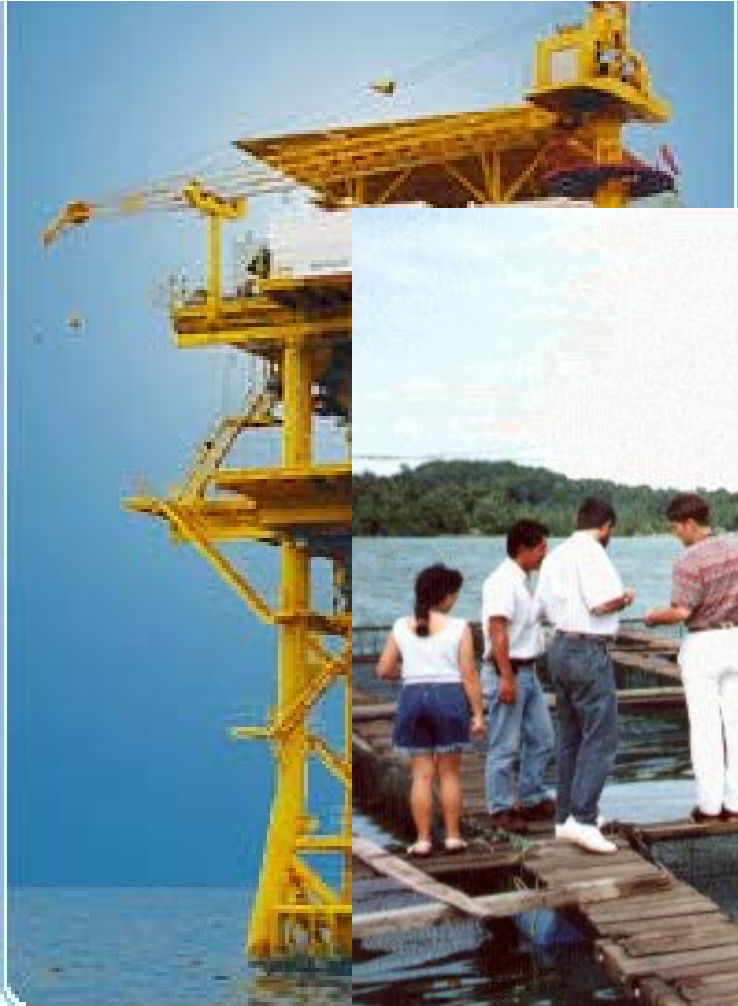


## Purpose

- **Establish background info and regulatory framework for selected competing marine resource users**
- **Illustrate complexity of offshore marine resource management (with an eye toward Regional Ocean Governance)**
- **Provide insight into potential for interagency cooperation (wrt ecosystem management principles)**

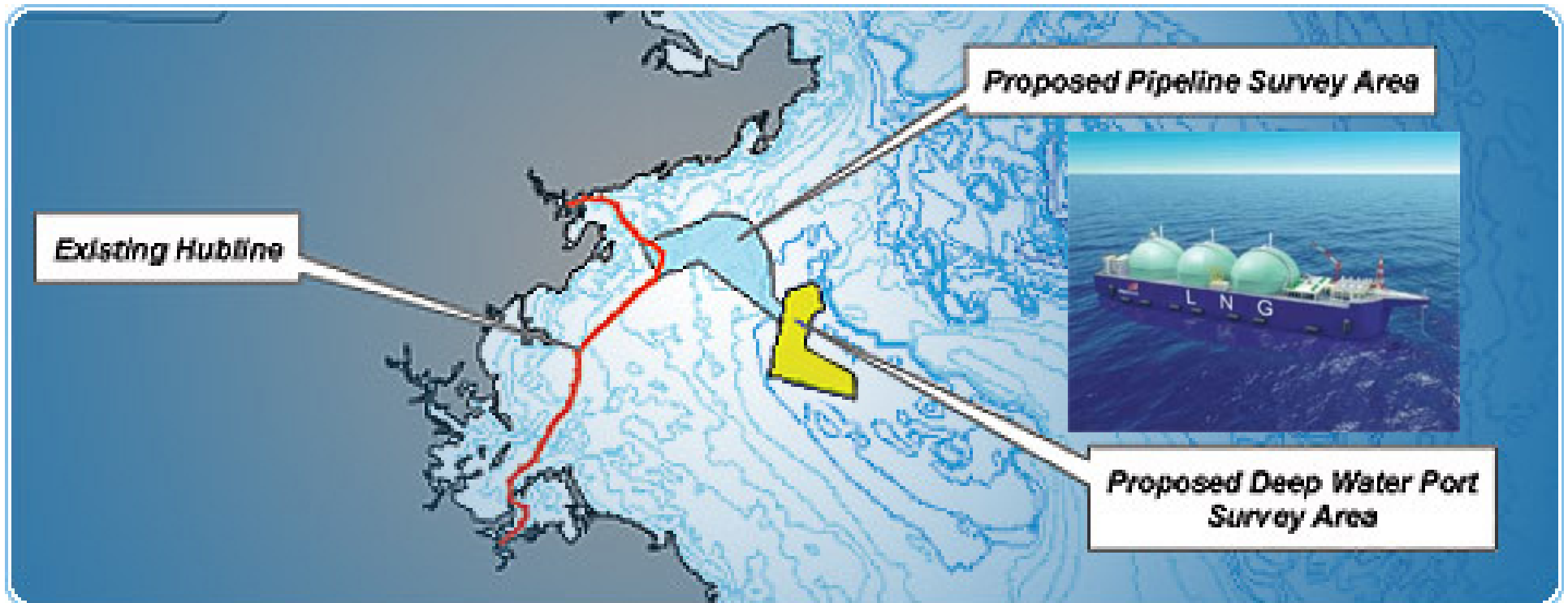


# Scope

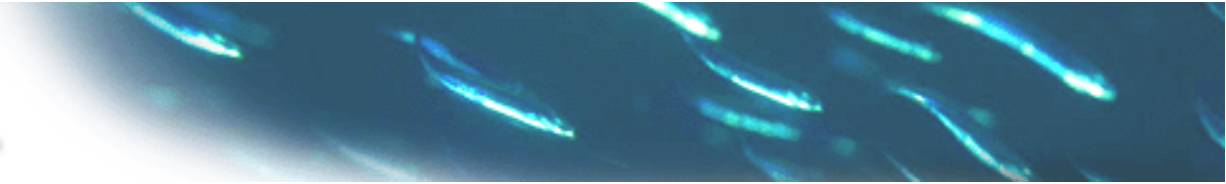




# Offshore LNG







## Regulatory framework

Offshore LNG

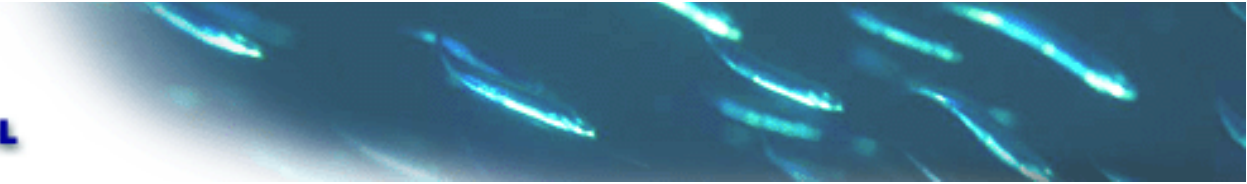
- DWPA, as amended in 2002, gives “location, ownership, construction, and operation of deepwater ports” authority to DOT
  - USCG
  - US MARAD
- Deepwater ports defined as:  
“...any fixed or floating manmade structure other than a vessel...located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State”



# Regulatory framework

Offshore LNG

- “Deepwater MOU”
  - U.S. Department of Commerce (DOC)
    - National Oceanic and Atmospheric Administration (NOAA)
      - National Marine Fisheries Service (NOAA Fisheries Service)
      - National Ocean Service (NOS)
  - U.S. Department of Defense (DOD)
    - (Installations and Environment) Utilities and Energy
    - Secretary of the Army, U.S. Army Corps of Engineers (COE)
  - U.S. Department of Energy (DOE)
    - Office of Fossil Energy
  - U.S. Department of Homeland Security (DHS)
    - U.S. Coast Guard (USCG)
  - U.S. Department of the Interior (DOI)
    - Minerals Management Service (MMS)
    - U.S. Fish and Wildlife Service (FWS)
  - U.S. Department of State (DOS)
  - U.S. Department of Transportation (DOT)
    - Maritime Administration (MARAD)
    - Research and Special Programs (RSPA)
  - U.S. Environmental Protection Agency (EPA)
  - Federal Energy Regulatory Commission (FERC)
  - Council on Environmental Quality (CEQ)



## Regulatory framework

Offshore LNG

- Adjacent state approval
  - Adjacent coastal state (ACS) defined as a state that:
    - (A) “would be directly connected by pipeline to a deepwater port as proposed in an application, or
    - (B) would be located within 15 miles of any such proposed deepwater port.”
- No license issued w/out approval fm governor of designated ACS





# Current projects

Offshore LNG

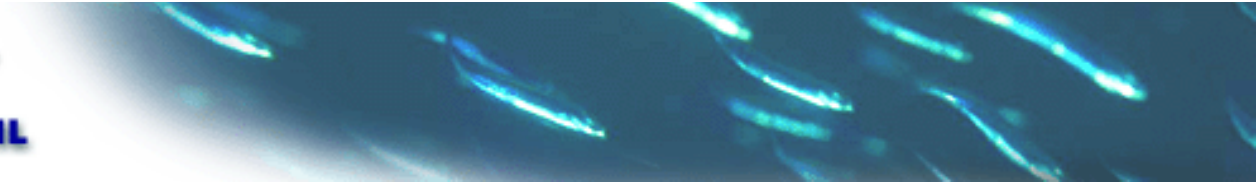
- Three approved as of July 2005:
  - Gulf Gateway Energy Bridge (Excelerate)
    - 116 miles south of Louisiana
    - Operational April 2005
    - Open loop system
  - Port Pelican (ChevronTexaco)
    - 36 miles south of Louisiana
  - Gulf Landing (Shell)
    - 38 miles south of Louisiana



## Proposed projects

Offshore LNG

- Seven under review as of July 2005:
  - Northeast Gateway - Gloucester, MA
  - Cabrillo Port – Ventura, CA
  - Clearwater Port – Southern CA
  - Main Pass Energy Hub – AL, LA, MS
  - Compass Port – AL, MS
  - Pearl Crossing – LA
  - Beacon Port – LA



## Energy Policy Act of 2005

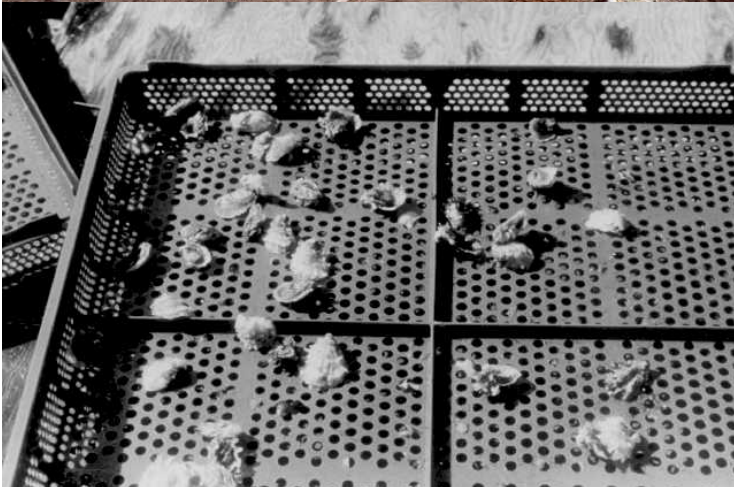
Offshore LNG

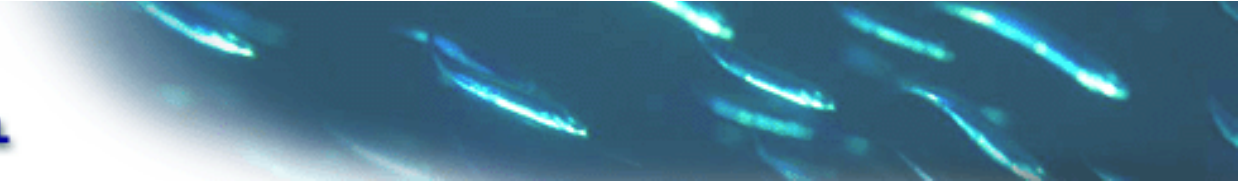
- Expands federal role in permitting and siting facilities “onshore and in state waters”
- FERC assumes lead agency
  - “Exclusive” authority in siting, construction and operation of LNG facilities
  - Most likely (though not expressly) overrides local zoning and non-federal laws, if in conflict





# Mariculture





# Regulatory Framework

Aquaculture

Multi-agency permitting process not well defined

- Permits required from:
  - NOAA Fisheries
  - COE
  - EPA
  - Fish & Wildlife Service
- NOAA Fisheries lead agency via MFCMC
- COE Sec 10 permits for “obstruction” to navigation
- EPA discharge permits



# Regulatory Framework

Aquaculture

## Fishery Management Councils:

- Not involved in siting or operation
- Jurisdiction for federally managed species via MFCMA
- FMPs may need to be modified or developed to accommodate





## Past projects

### Aquaculture

#### Norwegian Fish Farm, Inc (1988)

- Proposed Atlantic Salmon pens
  - 47 sq miles
  - 27 miles off of Gloucester
  - Hoped to produce 47 million lbs/year
- Army COE issued, then retracted permit in 1990 due to CLF lawsuit
- Project dropped in early 1990's



## Past projects

### Aquaculture

#### SeaFish (1990's)

- Used retired NG platform in GOM
- Cultivated Red Drum in cages
- Incurred losses due to storms and wave damage
- Ceased operation in mid 1990's

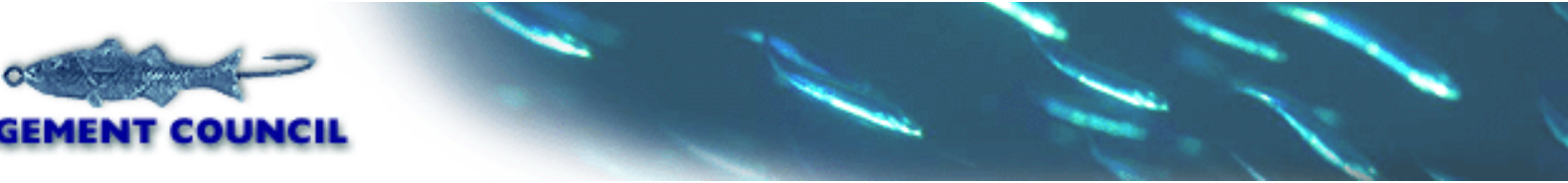


## Past projects

### Aquaculture

#### SeaStead (1990's)

- Army COE issued permit in 1995
- 12 miles southwest of Martha's Vineyard
- NEFMC authorized a site in close proximity; amended Scallop FMP
- No official closure on project



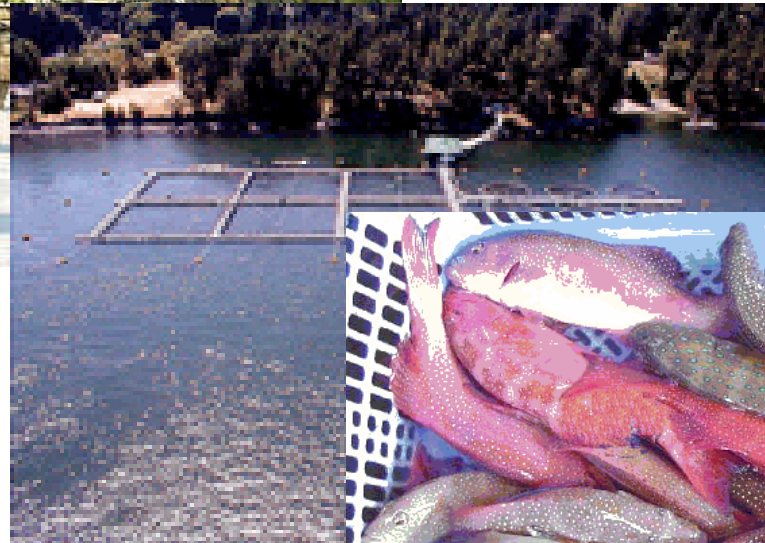
# Current/proposed projects

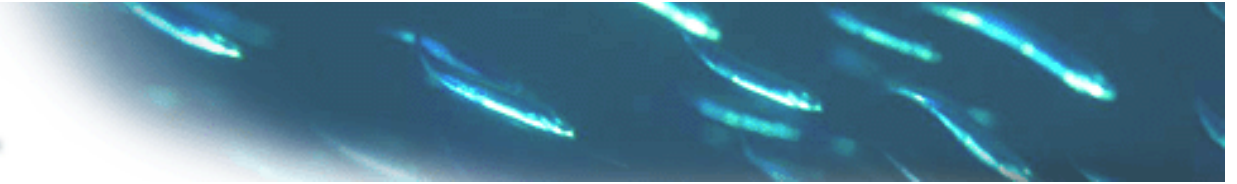
Aquaculture



As of Jan, '06...

**None**

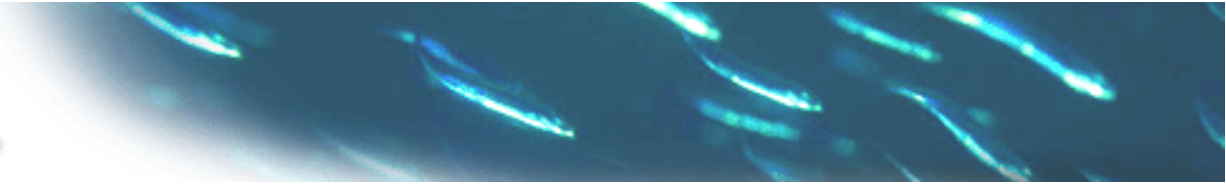




## National Aquaculture Act of 2005

### Aquaculture

- Would provide structure (currently absent) to permitting, siting and operation of offshore aquaculture facilities
- Would make DOC lead agency
- Would exempt facilities from MFCMA



## NAA '05

### Aquaculture

While exempted from MFCMA, DOC would still be req'd to:

- Ensure that offshore aquaculture does not interfere with MFCMA conservation and management measures for wild stocks
- Consult with RFMC's prior to issuing permits



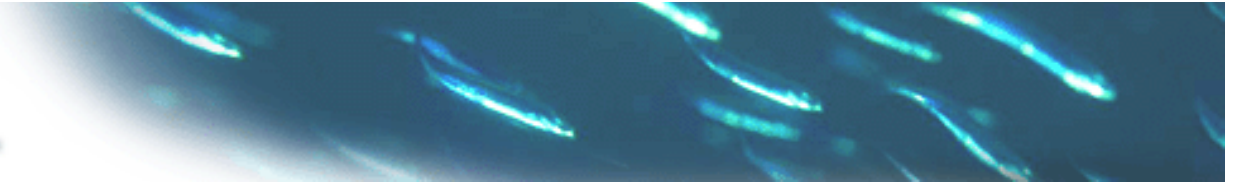


## Additional info

### Aquaculture

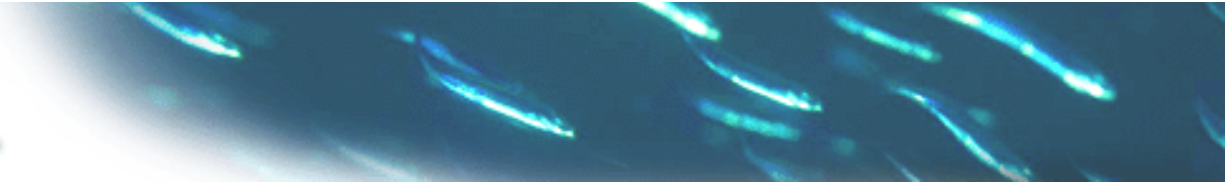
#### The Energy Policy Act of 2005:

- Gives the Secretary of the Interior (via the MMS) permission to grant a lease on the OCS if:
  - The use is for “authorized marine-related purposes”
  - The structure was previously used for energy-related activities (eg. oil platforms)
- This provision *may* give siting authority to the MMS for aquaculture under this very limited circumstance



# Windfarms

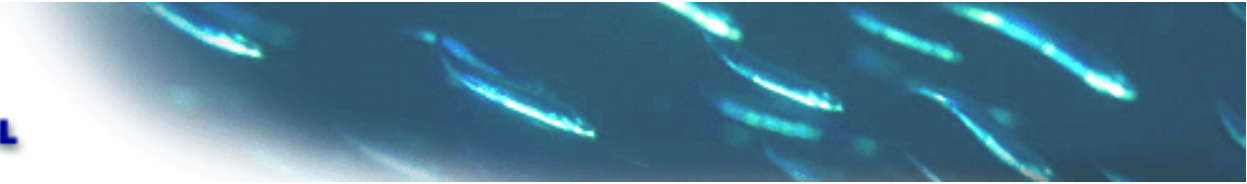




## Regulatory framework

Windfarms

- Army COE has assumed lead under the Rivers and Harbors Act
- RHA typically applies to 3nm
- Outer Continental Shelf Lands Act extends COE jurisdiction to the outer continental shelf
- Must conduct both a NEPA analysis and a “public interest review” under RHA prior to issuing permits

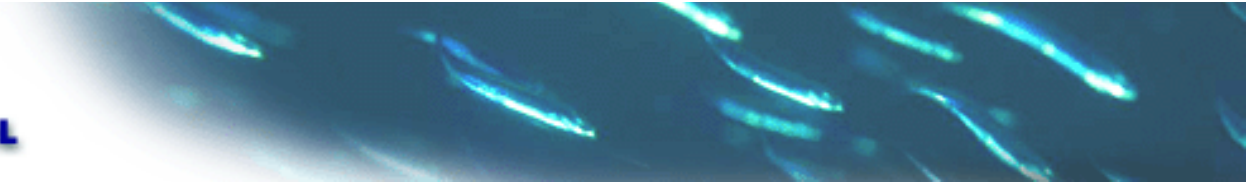


# Regulatory framework

Windfarms

## Energy Policy Act of 2005:

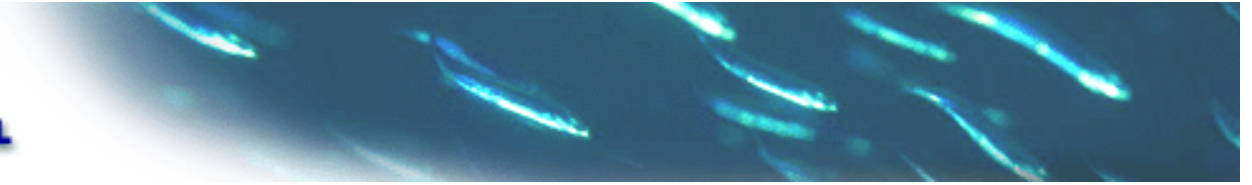
- Gives Secretary of the Interior (via MMS) authority for leases on the OCS for “energy from sources other than oil and gas”
- MMS must consult with USCG/DHS
- Previously, the COE claimed authority under the RHA and the OCSLA
- Section 10 (RHA) permits must still be issued by COE
  - Required “public interest review” in addition to NEPA responsibilities



## Regulatory framework

Windfarms

- MMS must consult:
  - NOAA Fisheries Service (MFCMA, MMPA)
  - Fish and Wildlife Service (MBTA)
  - EPA (Clean Water Act)
- Army COE (MMS?) must obtain “affected coastal state’s” consistency certification
  - Activity is consistent with the state’s CZMP



## Regulatory framework

Windfarms

- MMS:
  - Must consider any other uses of the seabed, “including use for a fishery”
  - Mechanism (eg. NEPA responsibility) for such consideration is unclear
  - No distinction btwn siting (leasing) and operations permits





# Proposed Projects

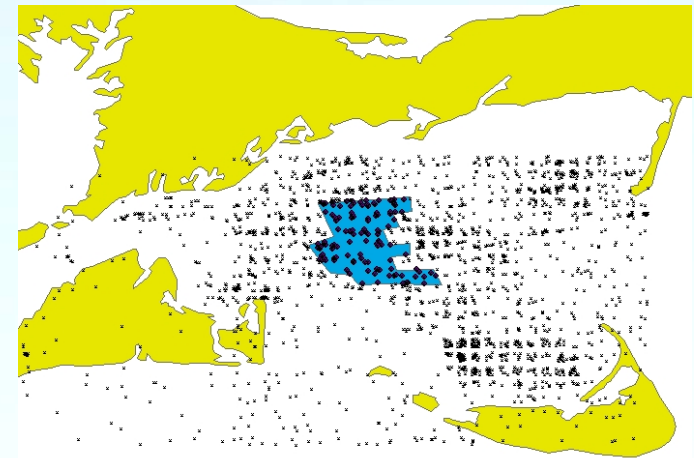


Windfarms



Cape Winds

Long Island  
Offshore Wind

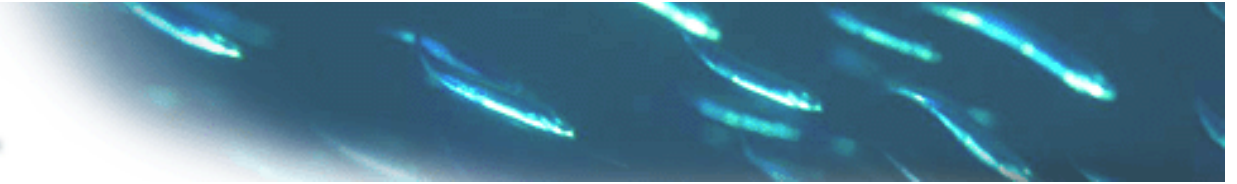




## NEFMC

### Conclusions

- Council may comment on “any activity...[that] may affect the habitat, including the essential fish habitat, of a fishery resource under its authority”  
*--note that this not restricted to designated EFH*
- Council must comment if “the proposed activity “is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority”



# NEFMC

## Conclusions

- Current situation:
  - Council's not part of "Deepwater MOU"
  - Limited success with comments in Gulf Gateway case
  - No anticipated aquaculture activity in near term
  - Uncertain reception from COE on wind farm impacts
- Going forward:
  - MS Reauthorization language
  - Ecosystem-based management



**Fishery impacts frequently go beyond EFH**



**Issues are emerging; no blueprint exists**



A photograph of an offshore wind farm at sunset. The sky is a deep orange, and the water is dark with shimmering reflections. Three large wind turbines are visible in the foreground, with several smaller vessels in the distance.

**NE has front-row seats for LNG and windfarm**



**NEFMC interests potentially impacted; we  
have a valuable role in the process as an  
interested party**

- **Written comments**
- **Scoping involvement**
- **Follow-up**



**Hab/Eco Ctte a potential venue for developing  
Council policy and response**



## Charge to Cttes

*How important to the Council's activities are non-fishing marine resource uses?*

*To what degree, if any, should the Council seek to become involved in the planning stages (i.e. scoping, hearings, etc) of such projects?*