Breaking the Gridlock:
Proposed Ideas for Moving MHK Project Development Forward in the US

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Marine Renewables Framework: Challenges & Solutions

METAP Webinar Series (July 15, 2010)
Summary Chart of Agencies With Jurisdiction Over Stages of Marine Renewables Development in the U.S.

Authorization/Approval
- FERC (FPA, 16 USC 817) license req'd for wave/tidal/MHK [waterpower] 0-12 miles offshore (5 yr pilot for demos)
- BOEMRE (fka MMS) interim 5 yr lease & full term lease for marine renewables 3-200 miles offshore; 10 miles off TX & FL Gulf

Physical Property Rights
- BOEMRE (fka MMS) OCSLA, 43 USC 1337(p) offshore wind 3-200 miles off; 10 miles offshore off TX & Gulf Coast of FL
- States lease/easement for marine renewables 0-3 miles; 10 miles off TX and FL Gulf
- States Jurisdiction over IC by QFs, DG, net metering & IC to distribution grid

Interconnection (IC) & Transmission
- FERC: Standard IC rules & NOPR re: integration renewables
- NOPR re: transmission planning (must include state renewable goals)
- States Jurisdiction over transmission siting w/ FERC backstop authority

Power Sales (Rates & Contracts)
- FERC: Wholesale rates and contracts between IOUs and MHK/offshore wind
- States: Approval of utility PPA for MHK/offshore wind, QF avoided costs, Net meter, DG & retail rates

R&D/Public Funding
- DOE: Waterpower program R&D funding through DOE
- DOE loan guarantees
- IRS: PTC, ITC, MACRs (1/2 PTC for MHK; PTC/ITC cash swap)
- States: RPS, Systems Benefits Funds, State grants, incentive rates, etc...

Other Applicable Statutes & Regulations:
- NEPA/EIS or EA (FERC license, MMS lease, DOE loan guarantee, w/categorical exclusion for demos or pilots; sometimes multiple NEPA required for same project) (Lead agency prepares EIS/EA)
- Dredge Permit, Section 404 (US Corps of Engineers)
- Coastal Zone Management Act, 15 USC 1455 (states, subject to Commerce review)
- Clean Water Act, 33 USC 401 (states - applies in state waters, not OCS)
- Endangered Species Act, 16 USC 1531 (DOI)
- Marine Mammal Protection Act, 16 USC 1371 (NOAA)
- National Historic Preservation Act, 16 USC 470 (state offices)
- States (many states have their own variation of these statutes; some may be preempted by FPA for MHK; no preemption for offshore wind)

Questions:
- Marine Spatial Planning (Some states engaged in MSP for state waters; Obama Ocean Task Force and proposed CLEAR Act)
Hurdles to Authorization Process

Lack of information

Multiple federal and state agencies

Small demonstration projects held to same standards and practices as large commercial projects

Precedent made by practice, not public interest

No synergy between industries (rigs to renewables, offshore/MHK)
Hurdles to the Lease Process

- Leases & authorizations on OCS are sequential process for marine renewables (double the time)

- Four years to develop lease rules - now hold ups as a result of BP Spill?

- BOEMRE process allows for competitive bids after developers have done extensive legwork - can give rise to controversies

- No assurance of build out for test lease for met tower. Developers need to reserve entire lease; may need full project EA for test facility.

- NOTE: Leasing has not been an issue in the Gulf; Texas leased lands for demonstration SeaDog
Lack of Uniform Connection Between Different Parts of the Project Development Process:

- Inability to obtain lease can disrupt interconnection process

- Duration of permitting disqualifies marine renewables for funding and tax credits

- No coordination between timelines for different state and federal permits

Financing opps foregone as a result of permit delays
Re-Engineering the Regulatory Framework for Marine Renewables
Recommendation #1:

Don’t focus on process.....

.. but public interest solutions
Instead of hundreds of questions about what ifs....

Determine how data impacts the bottom line

What is minimum data needed to enable the agency to fulfill its public interest statutory mandate? What is minimum to deal with project as proposed NOW?
Deadlines for both sides: Developers and mutually agreed upon agency deadlines.
Recommendation #2:

Eliminate myopia, where each agency focuses on its own narrow piece of the process instead of taking a collaborative & big picture approach.
Ways to Coordinate the Process

- Joint renewables offices and/or formal coordination
- Big picture issues - ocean pollution, green economy
- Uniform application process instead of multiple applications
- MOUs that aggregate all parties on transmission
- Increased early stage planning with states
Recommendation #3:

Special Processes to Advance Innovation

- Proportionality and adaptive management for new technologies, with special expedited procedures for test facilities -

- Funding for preliminary environmental studies, with results to public domain

- Test centers to ensure continual refinements
Coordinated planning cross-industry:

Resolve wave/wind regulatory uncertainty [no clear hybrid path]

Coordinate transmission planning & undersea cables

Coordinate states’ offshore program
Role of Marine Spatial Planning?

Current Issues with Obama CMSP and CLEAR Act

Marine renewables not a priority - no expedited process in exchange for planning

May foreclose development without enough information

No effort to gather information to inform decisions, rather makes assumptions in face of uncertainty

Unclear relationship between state and federal process

Will not move quickly enough to help industry now
Goal for 2010 and Beyond: Finding the Path Forward
Thank You!

For more questions, contact Carolyn Elefant, Law Offices of Carolyn Elefant or Ocean Renewable Energy Coalition

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