National Sea Grant Law Center

Legislative Announcement

August 2005

Energy Policy Act of 2005

On August 8, 2005, President George W. Bush signed into law the Energy Policy Act of 2005 (H.R. 6), a massive bill intended to strengthen U.S. energy production, including nuclear, oil and gas, coal, and wind power. The first comprehensive national energy legislation since 1992, the Act contains several provisions of particular importance to coastal resource management. This fact sheet discusses only a few sections of the Act. The complete text and a summary produced by the Congressional Research Service are available at http://thomas.loc.gov/ .

LIQUEFIED NATURAL GAS

The Act amends 15 U.S.C. § 717(b) and expands the scope of the Natural Gas Act "to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation." The Act also grants the Federal Energy Regulatory Commission (FERC) "the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." LNG terminals include

> all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—
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> (A) waterborne vessels used to deliver natural gas to or from any such facility; or
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> (B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7.

The amendments to the Natural Gas Act do not affect the rights of coastal states under the Coastal Zone Management Act (CZMA), the Clean Air Act or the Clean Water Act. Governors are required to designate a state agency to consult with FERC during the application process on State and local safety considerations, including existing and future populations and land uses near the proposed sites. The state agency is also authorized to issue an advisory report to FERC on a pending application within thirty days of the filing of the application. FERC must review and respond to the issues raised in the state's report before a permit is issued. States may also conduct safety inspections of terminals upon written notice to FERC.

COASTAL ZONE MANAGEMENT

In 2003, the National Oceanic and Atmospheric Administration (NOAA) published proposed changes to the federal CZMA consistency regulations. Final regulations have yet to be issued by NOAA. The Energy Policy Act amends the CZMA and gives effect to some of the NOAA-proposed regulations, although Congress deviates from NOAA with respect to the timeline governing consistency appeals. Under NOAA's proposed regulations, the record in a consistency appeal would close within 270 days of the notice of appeal's publication in the Federal Register. The Act, however, requires the Secretary of Commerce to close the record of appeal within 160 days. In addition, the proposed regulations would require the Secretary to issue a decision on the appeal (or explain why this is not possible) within ninety days of the close of the record. The Energy Act mandates the Secretary issue his notice in sixty days. Finally, under the proposed regulations, if the Secretary announces that a decision will be delayed, he would get an additional forty-five days. The Energy Act gives the Secretary only an additional fifteen days.

ALTERNATIVE ENERGY

Section 388 of the Energy Act allows the Secretary of Interior (through the Mineral Management Service (MMS)) to grant a lease, easement, or right of way on the Outer Continental Shelf for the production, transportation, or transmission of "energy from sources other than oil and gas." This provision is important, since it would allow the MMS to permit wind farms and other alternative energy structures to be built in federal waters. This section of the Act also contains an interesting provision that authorizes the Secretary to grant a lease if the proposed activities "use, for energy-related purposes or for *other authorized marine-related purposes*, facilities currently or previously used for activities authorized under this Act." The broad language could be interpreted as providing the MMS with the authority to permit the use of decommissioned oil rigs for aquaculture production.

COASTAL IMPACT ASSISTANCE PROGRAM

The Act amends the Outer Continental Shelf Lands Act to provide for the disbursement of $250,000,000 each year between 2007 and 2010 to producing states and coastal political subdivisions. A producing state is a coastal state with "a coastal seaward boundary within 200 nautical miles of the geographic center of a leased tract within any area of the outer Continental Shelf." Interestingly, the Act excludes from the definition of "producing state" any coastal state where the majority of the coastline is subject to a leasing moratorium, unless production was occurring on January 1, 2005 from a lease within 10 nautical miles of the state's coastline. Coastal political subdivisions are any political subdivisions of a coastal state within the coastal zone (as defined under the CZMA) on the date of the enactment of the Energy Policy Act and not more than 200 nautical miles from the geographic center of any leased tract.

To receive its share of the $250,000,000, a producing state must have an approved Coastal Impact Assistance Plan by July 1, 2008 which describes how the states and the coastal political subdivisions will use the funds. CIAP funds can only be used for one or more of the following purposes: projects and activities for the conservation, protection, or restoration of coastal areas, including wetland; mitigation of damage to fish, wildlife, or natural resources; planning assistance and the administrative costs of complying with this section; implementation of a federally-approved marine, coastal, or comprehensive conservation management plan; mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

Funds will be allocated to producing states based on the ratio of the amount of qualified revenues generated off the state's coastline to the total revenues generated. For cases where more than one state is located within 200 miles of the lease tract, allocations will be "inversely proportional to the distance between the nearest point on the coastline of the producing state and the geographic center of the leased tract." All producing states will receive a minimum of one percent of the total funds available for disbursement. 35 percent of each producing state's allocation is to be paid to the coastal political subdivisions in each state.

GREAT LAKES DRILLING

The Act prohibits the issuance of federal or state permits and leases for "new oil and gas slant, directional, or offshore drilling in or under one or more of the Great Lakes."

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